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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 13 November 2002 (S/2002/1247).

The Counter-Terrorism Committee has received the attached third report from France submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex to the letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

[Original: French]

In reply to your letter of last November, please find attached the second supplementary report submitted by France to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Jean-Marc **de La Sablière**

Enclosure

Second supplementary report submitted by France to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)

Effective implementation of paragraph 1 of the resolution also requires the existence of legal provisions or administrative measures that ensure that funds and other economic resources collected by non-profit organizations (e.g. religious, charitable or cultural organizations) are not diverted from the stated purpose, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in France, in addition to Law No. 93-122 of 29 January 1993 and, if not, how France proposes to adapt its legislation in order to comply with the requirement of this paragraph.

In order to ensure transparency in the movement of funds collected by these organizations or associations, there is a legal framework for oversight of associations and foundations which gives the public authorities the legal means to regulate them and address the actions of those that violate the law or disturb public order.

In France, associations which are non-profit organizations as defined by the Act of 1 July 1901, occupy an important place in the life of society and participate actively in the democratic process. While they do benefit from a certain number of tax advantages because of their status, they give tangible expression, above all, to freedom of expression and association, rather than the exercise of a tax right.

Similarly, in French law, a foundation is viewed as the manifestation of a desire to allocate resources to a particular purpose and not as a legal institution inserted between a donor and a recipient which, in view of its charitable aims, would enjoy various advantages, in particular regarding taxation.

From the foregoing, it will be clear that the tax authorities cannot provide oversight for the operations of an institution such as an association which receives an exemption (or in France, the State cannot oversee foundations which it can create or dissolve at its discretion).

1. Associations

The purpose of the Act of 1 July 1901 and its executing decree of 16 August 1901 was essentially to organize the exercise of a public freedom, not to create a legal structure.

Freedom of association is among the fundamental principles recognized in the laws of the Republic and guaranteed in the preamble to the Constitution of 1946, to which the Constitution of 1958 refers. Therefore, it has constitutional standing recognized by the Constitutional Council in its decision of 16 July 1971.

It is also proclaimed in numerous international instruments (European Convention on Human Rights, International Covenant on Civil and Political Rights); accordingly, any law which might hinder the exercise of freedom of association can be set aside automatically by the courts.

The principle of freedom of association means, without exception, that:

Any individual is free to form an association. This implies that the principle of formation of an association is not subject to prior administrative authorization, although the granting of legal personality, and therefore the recognition of an association as such, may be.

Any individual is free to join an association. Conversely, any individual is free not to join an association or to withdraw from one at any time.

(a) Definition of "association":

- An association is an agreement whereby two or more persons place in common in an ongoing way their knowledge or activity for a purpose other than sharing profit.
- On creation of an association, the members (participants) contribute their knowledge or activity. In this regard, article 1 of the Act of 1901 requires that the pooling of knowledge or activity must be ongoing, which distinguishes the association from a mere meeting.
- All the members of the association have equal rights, which for example, differentiates an association contract from a labour contract.

The non-profit aims of an association do not imply that it is prohibited from exercising economic activity. Indeed, some associations of the "Act of 1901" type rapidly proved to have declared economic activity which generates significant funds, for example, cultural associations, vocational training centres and sports clubs.

In order to take into account this situation, and thus to organize oversight of the management of these associations, the Act of 1 March 1984 and its executing decree of 1 March 1985 requires non-commercial legal persons under private law with significant economic activity to issue an annual balance sheet.

Moreover, such bodies are required to designate an auditor (legally trained and an independent accountant) who has the obligation to disclose to the State prosecutor any facts that might compromise the continuity of the operation of the legal person and any criminal action of which he has knowledge through the exercise of his duties.

(b) Functioning of associations:

Legal personality:

It should be noted that a distinction is made among associations which are undeclared, declared or recognized as being of service to the public.

Although associations may be formed freely, only associations declared to the administrative authorities enjoy legal personality.

With regard to declared associations, a distinction is made between "simple" associations, which have a reduced form of legal personality, and "recognized public service" associations, which have full legal personality (which in particular allows them to own property and receive funds in the form of gifts or bequests).

In order to be recognized as being of service to the public, the association must have a purpose recognized as such and it must also be national in scope. This designation is granted or withdrawn by the administrative authorities.

Financing:

Aside from resources which may be derived from economic activity, declared associations or those recognized as being of service to the public can charge dues to their members, even if they are not obligatory. The amount of dues for a declared association not recognized as being of service to the public should not be excessive, however, they might then be considered a donation (gift), and hence that status could be revoked because an association of this type is not authorized to receive funds by this means.

An association may also benefit from other resources generated by its own activities.

Finally, an association which is declared and/or of recognized service to the public can also receive public financing in the form of subsidies from the State or a local authority. Since such subsidies are viewed as an individual administrative decision, they are under the competence of administrative jurisdictions as far as monitoring of the legality of the decision is concerned.

The granting of such a subsidy implies the right of the requested body to monitor it (description of activities, projected budget, accounting balance sheets, justification of expenditures, etc.) at two levels: first, when the request for a subsidy is made, and second, when an accounting is given of the actual use of the funds.

Out of concern for transparency in the use of public funds, the Act of 1 March 1984 requires associations that receive an annual subsidy of more than 150,000 euros from a public entity to prepare a balance sheet, an income statement and an annex, under the supervision of an auditor (article L. 612-4 of the Commerce Code).

Dissolution:

An association may cease to exist following voluntary dissolution (through a special decision or statutory stipulation), under a legal ruling but also through a judicial or administrative sanction. The principle of dissolution as a sanction against a political party pursuing an aim contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms has been upheld by the European Court (see decision of the European Court of Human Rights concerning the Turkish Islamist party (REFAH).

Judicial sanctions:

The Act of 1 July 1901 stipulates that associations founded for an illicit cause or purpose, contrary to the law or morality, or having the aim of undermining the integrity of the national territory or the republican form of government, are null and void. The decision to invalidate them is rendered by the high court, either at the request of any interested party, or at the request of the public prosecutor's office. In ordering dissolution, the court considers not only the purpose contained in the statutes, but that actually pursued by the association. It is not necessary for prohibited acts to have been committed. This is a civil proceeding.

This procedure for the dissolution of an association as a legal person is independent of any possible criminal prosecution against the members or directors of the association as physical persons or even against the legal person itself, whose dissolution can also be ordered as a criminal sanction when, in the cases covered by

the law or regulations, offences have been committed in its name by its organs or representatives (article 121-2 of the Criminal Code).

Administrative sanctions:

The Act of 10 January 1936 allows the dissolution, by decree of the Council of Ministers, of combat groups and private militias formed as associations, whether declared or not, that incite armed demonstrations in the streets, are organized into combat groups and private militias, call for racial discrimination, hatred or violence, or, in French territory or originating from that territory, pursue activities intended to promote acts of terrorism in France or abroad. The reconstitution of a dissolved association or group is also a criminal offence.

For example, this type of measure has recently been taken against an extremist movement, a member of which attempted to assassinate the President of the French Republic using a firearm on 14 July 2002.

2. Foundations

In French law, the term "foundation" can have two meanings:

The act whereby one or several natural or legal persons decide to allocate irrevocably property, rights or resources to the realization of a task of general interest and not for profit.

The legal person resulting from an act under private law among one or more persons.

Foundation law has been developed practically without legislative support, at least up to the Act of 23 July 1987 concerning patronage.

The Act of 1 July 1901 concerning contracts of association does not refer to foundations, which in fact enjoy a special regime that has long been regulated only by the jurisprudence of the Council of State, even though the economic share of the private non-profit sector in France (over 30 billion euro) is largely composed of foundations.

The Act of 23 July 1987 provided a legal definition of a foundation, and the Act of 4 July 1990 instituted a minimum applicable legal regime for foundations recognized as being of public service.

This regulation, and incidentally, monitoring of its implementation, was not justified by economic or tax considerations alone, but also by the need to ensure respect for the wishes of the founders and donors in the achievement of the intended aim and to ensure that over time the condition of service to the public would be respected (in particular, the relevance of the tax advantages granted because of that status).

Finally, in a structure without members or general assembly, monitoring of the directors must necessarily come from outside the foundation.

(a) Monitoring of foundations

Monitoring of foundations takes place at two levels:

(1) On establishment of the foundation:

The Council of State, the higher administrative jurisdiction called on to give its views on the legitimacy and regularity of the establishment, as earlier, the minister responsible for preparing the proceeding will have done, endeavours to verify the draft statutes, which must be in accordance with the models proposed by the administration and also must meet the conditions for validity of the foundation: the original desire of the founders, the usefulness to society of the aim pursued and the precise identification of recipients of donations.

Recognition by the Government of the foundation's usefulness to society depends on this monitoring.

This Government decision, which actually constitutes a "birth certificate" for the foundation, is a regulatory decision of the public authority, as it should be stressed that the establishment of a foundation must be authorized. In France, there is not the same freedom to establish a foundation as there is for associations.

This decision on recognition is the proof of the seriousness and legitimacy of the project, which confers privileges, in particular regarding taxation.

(2) During the operation of the foundation:

Under French law, foundations recognized as being of benefit to society must receive prior authorization to accept donations and bequests made to them.

Administrative supervision is a very stringent form of control that restricts the ability of foundations to receive funds. With regard to public fund-raising, foundations, like all other organizations wishing to collect funds by this means, must make an advance declaration (principles and modalities of the operation planned) to the administrative authority (prefect).

This appeal for public financing also involves monitoring by the Board of Auditors and the Office of the Inspector-General for Social Affairs (verification of expenditures, accounting supervision, identification of beneficiaries, etc.).

Finally, foundations of benefit to society are controlled internally to the extent that a representative of the State sits *ex officio* on the board of directors of the institution.

(b) Sanctions:

Failure to observe the requirements imposed on foundations may result in withdrawal by the State of recognition of its benefit to society, and thus the end of the foundation as such.

The vigilance devoted to prevention, identification, and suppression of these criminal activities ensures that the field of action of terrorist organizations can be determined and covered so as to deprive them of their means of subsistence and neutralize them as far as possible, before they commit even more serious acts. In order to be as effective as possible, the fight against terrorism must identity the logistical structures of terrorist organizations.

It should be stressed that criminal responsibility of associations as legal persons may be engaged if acts of terrorism or financing of terrorism have been committed in their name by their bodies or representatives.

In the context of subparagraph 1 (c) of the resolution, please outline the procedure that leads to the freezing of terrorist funds upon request of foreign authorities, both from members and non-members of the European Union.

When a foreign Government, whether or not it is a member of the European Union, contacts the Ministry of Foreign Affairs to request the freezing of funds belonging to terrorists, the latter contacts the Ministries which could be involved for their opinion (Finance, Interior, Defence, Justice). An inter-ministerial consultation procedure leads to the adoption of a decision on the request. The French Government, by virtue of articles L151-1 and L151-2 of the monetary and financial code, can impose measures to freeze assets by national decree, but in general, the procedure consists in placing the body or individual on a list of terrorist organizations, either under the Security Council Committee established pursuant to resolution 1267 (1999) if it has links with al-Qa'idah and its sphere of influence, or on the European list (common position of 10 December 2001 in implementation of United Nations Security Council resolution 1373 (2001)). The European regulations adopted under these two procedures (regulation 881/2002 of 27 May 2002 and regulation 2580/2001 of 27 December 2001) are immediately applicable and allow the freezing of terrorist assets without recourse to the national procedure for freezing of assets.

Effective implementation of subparagraph 2 (e) of the resolution requires that States ensure that persons who participate in the financing, planning, preparation or perpetration of terrorist acts or support such acts are brought to justice, either by submitting the case without undue delay to their respective competent authorities for the purpose of prosecution or by extraditing these persons. This applies without any exception whatsoever and whether or not the offence was committed in their respective territories. Please explain how, in order to comply with subparagraph 2 (e), France would deal with a foreign national who is in France and has committed a terrorist act within France (for instance as an accomplice) or outside France against another State or its citizens. Is it possible, under current or proposed law, to prosecute that person in France

- **if he or she is not extradited by France?**
- **or before that person is convicted by a foreign court?**

In order to reply to this question, it is necessary to draw a distinction between two possible scenarios that are fundamentally different.

(1) The case of a foreign national who has committed acts of terrorism or financing of terrorism in the national territory against the interests of a third State or its nationals:

In this hypothetical case, French courts have jurisdiction to investigate these acts by virtue of article 113-2 of the Criminal Code, which establishes the competence of criminal courts on the basis of the criterion of territoriality, regardless of the nationality of the victims. It is therefore possible to prosecute the perpetrator of the offence in this case, provided that France does not plan to extradite him and he has not been convicted abroad for the same acts.

It should be recalled that in application of the principle of *ne bis in idem* (article 113-9 of the Criminal Code) public action is extinguished in France (and

prosecution is impossible) as soon as a final verdict has been reached in another country against the same person for the same acts.

The conditions for implementing the criterion of territoriality are particularly flexible in French law. It is sufficient that one of the elements constituting the offence has been committed in its territory to render French courts competent to pursue the matter.

Furthermore, the offence of complicity, in France, in a terrorist offence committed abroad also falls under the jurisdiction of the French courts by virtue of article 113-5 of the Criminal Code, under two conditions: first, reciprocity of charges (in France and in the third country) on the principal offence; second, confirmation of the offence by a final decision from a court in the third State.

(2) The case of a foreign national who has committed acts of terrorism or financing of terrorism outside the national territory against the interests of a third State or its nationals:

More simply put, this hypothetical case is of a foreign national who has committed acts of terrorism abroad against foreign victims. In this case, it is also possible to prosecute in France, even though the victim or victims do not have French nationality and the interests of the French State are not targeted. The same holds true if the person in question is only an accomplice in the offence (principle stated explicitly in article 689 of the Code of Criminal Procedure).

However, the legal basis for this jurisdiction is different. It has to do with the provisions of article 689-1 of the Code of Criminal Procedure, which establishes "virtually universal" competence for French courts to investigate the most serious offences envisaged in a series of international conventions. Some of them are specifically related to acts of terrorism:

The European Convention on the Suppression of Terrorism, signed at Strasbourg on 27 January 1977, and the Dublin agreement for the application of this convention, signed on 4 December 1979;

The Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 3 March 1980;

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and for the application of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988;

The Convention on the Suppression of the Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, done at Montreal on 24 February 1988, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

The International Convention for the Suppression of Terrorist Bombings, opened for signature at New York on 12 January 1998;

International Convention for the Suppression of the Financing of Terrorism, opened for signature in New York on 10 January 2000.

The implementation of this criterion for the expanded competence of French criminal courts is, however, conditional on the presence in the national territory of the presumed perpetrator of the offence, which corresponds to the hypothetical situation raised by the Committee in its question.

Prosecution can be initiated as a result of an official charge by a foreign Government or a complaint by a victim. On this point, it must be specified that a civil complaint allows the victim of a criminal offence to begin public action. In criminal matters, the prosecution is undertaken by the Public Prosecutor when the acts were committed abroad (article 113-8 of the Criminal Code).

Here again, the circumstance of France refusing in advance to extradite the individual involved is irrelevant, and prosecution is possible in France as long as no final verdict has been rendered abroad against the same person for the same crime.

Please provide a progress report on the ratification and domestic implementation of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

The bill concerning adherence to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly on 14 December 1973, was brought to the National Assembly on 30 October 2002. A rapporteur was appointed on 4 December 2002 and the Committee on Foreign Affairs of the National Assembly should consider the bill in the coming weeks before submitting it to the National Assembly for a vote.

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I write with reference to my letter of 13 November 2002 (S/2002/1256).

The Counter-Terrorism Committee has received the attached third report from Poland submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-27580 (E) 170303

Annex

Letter dated 30 January 2003 from the Permanent Representative of Poland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter of 30 October 2002, on behalf of my Government, I have the honour to submit herewith to the Counter-Terrorism Committee (CTC) the second supplementary report to the report transmitted to CTC on 21 December 2001, on the measures taken by the Republic of Poland to implement the provisions of resolution 1373 (2001) of 28 September 2001 (see enclosure).

Please note that the paragraphs used in the present report refer to the paragraphs in which specific questions or requests are contained in your letter mentioned above.

My Government stands ready to provide the Committee with further information, as necessary, or if requested to do so by the Committee and to assist it in the assessment of the implementation of the resolution.

I should be grateful if you would have the text of the present letter and the enclosed information circulated as a document of the Security Council.

(*Signed*) Janusz **Stańczyk**
Ambassador
Permanent Representative

Enclosure

Second supplementary report of Poland on the implementation of resolution 1373 (2001) submitted to the Counter-Terrorism Committee*

Paragraph 1. Implementation measures

Paragraph 1.2

The Government of the Republic of Poland welcomes the comments of the Counter-Terrorism Committee (CTC) in this regard. Further examination of the legal provisions in force in Poland relating to aiding and abetting in combination with attempt to commit crime in effect confirm that the doubts raised by several States in this connection could be justified.

Apart from the works realised in connection with the ratification of the International Convention for the Suppression of the Financing of Terrorism, some further consideration is given to the introduction to the Penal Code of express definition of "terrorist act" with relevant penalties, both for their commitment, as well as provision of funds for their commitment. This interconnection has been indeed perceived by the General Inspector of Financial Information as crucial to fill possible gaps in the legal provisions in order to tackle with the problem more effectively.

As the amendments to the Penal Code are still under examination in the Lower House of the Parliament (special Committee is in charge), the Ministry of Foreign Affairs, together with the Ministry of Justice and Ministry of Finance, will monitor the works to address the issues raised by the CTC in its comments.

The process of ratification of the Convention is at its final stage. The draft law authorising the President of the Republic of Poland to ratify the Convention has been passed in the Lower House of the Parliament and now the draft is subject to the procedure in the House of Senate. It is expected that the law will be passed by the Parliament soon and after its entry into force, the President will proceed with the ratification of the Convention.

The Government would like to confirm that once the Convention is ratified in Poland, Article 2 will have effect, as part of domestic law of Poland and ancillary acts will be outlawed. As to the attachment penalties to ancillary acts and the level of penalties it should be borne in mind that:

- in accordance with Article 18 of the Penal Code whoever, with an intent that another person should commit a prohibited act, facilitates by his behavior the commission of the act particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.
- Article 19 of the Code stipulates that the court renders the judgment for aiding and abetting within the limits of the penalties envisaged for perpetration of the offence, which means that the level of penalty will depend on the penalty provided for in the Code for the offences themselves, which meet characteristics of terrorist acts and that it is for the court to decide on the level of penalty, taking into account all the relevant circumstances of the case, including seriousness of the offence.

Paragraph 1.3

The law amending the law of 16 November 2000 on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources was passed by the Parliament on 27 September 2002. It entered into force on 29 November 2002.

In accordance with the amendment the current title of the law is: "on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting financing of terrorism". The copy of translation of the uniform text of the law is attached to the present Report. Some expressions used in the translation may differ from the terminology used in the previous Reports submitted by Poland. Nonetheless, the attached

* Enclosures are on file with the Secretariat and are available for consultation.

text could serve as a reference for future consideration by the CTC. Unfortunately, this translation is not available in electronic form yet. The last three articles of that law are transitional ones, incorporated from the amending law.

Paragraph 1.4

Before the entry into force of the amendments to the law referred to in paragraph 1.3, the competencies, which are now with the General Inspector of Financial Information, were discharged by Prosecutor's offices or State Protection Office (not "Prosecution Office" as it is stated in the CTC's comments) on the basis of the Penal Proceedings Code. The said institutions are vested with investigation competencies, both in relation with ordinary crimes, as well as those threatening the security of the state.

Since the amendment of the Law of 16 November 2000 is already in force, the Government wishes to confirm that all the mechanisms pointed out by the CTC (namely the freezing of assets, investigation and the initiation of proceedings – distinct from seizure or forfeiture on conviction) are provided in the amendment and are in force already.

Paragraph 1.5

The matter is under careful consideration by the General Inspector for Financial Information, who generally shares the concerns raised by the Committee. The Committee will be informed on the results of that consideration.

Paragraph 1.6

The charitable activities may be carried out by rather broad spectrum of institutions. These may include associations, foundations, religious bodies, etc. Hence, the requirements relating to the registration of such bodies are contained in various legal acts, e.g. Law on associations of 7 April 1989, Law on foundations of 6 April 1984, as well as in laws concerning churches and religious unions or agreements concluded between the Government and such religious institutions. As to the requirements of registration, financial and property requirements the provisions of the Law on associations will apply to the latter accordingly.

Law on associations contains general requirements related to the registration. These requirements are similar in the cases of other bodies. The association is subject to the entry into National Court Register. The register court, after the consideration of the request for registration, issues a decision on registration of the association when it founds that its statute is consistent with the legal provisions and the founders meet the requirements provided for in the Law.

The surveillance over the associations is carried out by representative of the Government in the *województwo* (province) being the unit of administrative division of Poland – in case of associations of units of territorial self-government or by head of regional administration – in case of other associations, competent for the registered office of particular association. The important is that the provisions of the Law do not prejudice rights and competencies of prosecutors resulting from other laws.

In case of foundations, they may indicate minister competent for the purposes of that foundation, who may discharge the functions of surveillance organ.

The court, upon request of surveillance organ or prosecutor may, as one of the measures, dissolve the association, if its activity shows gross or repeated breach of the law or provisions of its statute. Prosecutor may institute ordinary proceedings, within its competence related to the breaches of law, committed by the association.

Right of association, which is enshrined in the Constitution, may be subject to limitations introduced only by law, which are required for the assurance of interests of national security or public order as well as protection of health or public morality or protection of rights and freedoms of other persons.

The law applies to aliens as well. The aliens having residence in the territory of the Republic of Poland may associate in accordance with the provisions applicable to Polish citizens. The aliens, who do not have residence in Poland may integrate associations, if their statutes envisage such a possibility.

Paragraph 1.7

The outcome of the analysis mentioned in the previous report in relation to the scope of Article 113 of the Penal Code *vis-à-vis* the requirements of paragraph 2 (in particular) of the resolution is positive. All the cases of behaviour

determined in the subparagraph 2 (a) of resolution 1373 (2001), with the exception of the perpetrators, with respect to whom decision on extradition has been taken, will be subject to the Polish jurisdiction.

Paragraph 1.8

Internally, the controls applicable to the acquisition and use within Poland of firearms and explosives are regulated by laws and executive regulations thereto. These provisions are consistent with the European legislation.

Firearms

The Law of 21 May 1999 on arms and munitions determines detailed principles of issuance and withdrawal of permits for arms, acquisition, storage, disposal and deposition of arms and munitions, transport through the national territory as well as importation from and exportation abroad of arms and munitions, as well as principles governing the possession of arms and munitions by aliens.

The acquisition and possession of firearms is subject to special permit issued by competent Police organ. The Law specifies cases where permits cannot be issued to persons who do not meet specific requirements or infringed conditions and obligations set forth in the Law. The same conditions apply to the withdrawal of permits. Firearms should be registered and the owner has to have special document confirming possession of arms. The provisions of the Law apply to aliens accordingly.

There are specific provisions in the Law related to possession of arms and munitions in case of members of diplomatic missions and consular offices, other persons with equal status, who can possess arms and munitions on the basis of international agreements or the principle of mutuality. In this case the possession of arms is subject to temporary permit issued by competent Police organ. The Law contains penal sanctions and provisions on seizure of arms and munitions.

There are executive regulations to that Law, which relate inter alia to: types of especially dangerous arms and munitions in case of which permit may be issued; medical and psychological examination of persons who apply for or possess permit; model declaration of importation from abroad of arms and munitions and procedure for transmission of information to the Police on importation of arms and munitions by customs services; procedure and conditions for the issuance of permits for arms to the members of diplomatic missions and consular offices and persons having equal status; detailed principles of deposition of arms and munitions; model required documents, etc.

There are separate legal provisions relating to the possession and use of firearms and explosives by state bodies and their officers responsible for the maintenance of national security and public order as well as Armed Forces.

Explosives

The Law of 21 June 2002 on explosives for civilian use determines principles of issuance and withdrawal of permits for acquisition and storage of explosives, basic requirements in relation with explosives introduced to trade, principles of governing the transport of explosives and its control, conformity assessment procedures and marking of explosives.

Acquisition and storage of explosives for civilian use requires permit, issued by chief of provincial administration (representative of the Government in the province), competent for the registered office of the requesting person. The Law specifies the information required for the issuance of permit, conditions to be met by these persons to obtain the permit as well as the cases when the permit should be denied or withdrawn. Transport and transit of explosives requires consent of the Minister for Economy, Labour and Social Protection.

There are executive regulations to that Law, which determine inter alia: requirements of training and examination of persons, who have access to explosives, model register of explosives, model request for permit.

There are separate legal provisions relating to the possession and use of firearms and explosives by state bodies and their officers responsible for the maintenance of national security and public order as well as Armed Forces.

Provisions common to firearms and explosives

The provisions concerning the principles of economic activity relating to the manufacturing and trade with explosives, arms, munitions and products and technologies of military and police purposes are contained in the Law of 22 June 2001. Executive regulations to that Law specify: conditions of sale of, scope and manner of verification of

consistency with these requirements, requirements as to quality assessment, registration of these sensitive materials, and principles of management in terms of environmental protection and protection of human life and health.

Paragraph 1.9

Outline of Articles 109 – 114 of the Penal Code

Article 109 stipulates that the Polish penal law shall apply to Polish citizens who have committed an offence abroad.

Article 110 stipulates that the Polish penal law shall apply to aliens who have committed abroad offence against the interests of the Republic of Poland, Polish citizen, Polish legal person or Polish organizational unit without legal personality. In accordance with that Article, the Polish penal law shall apply to aliens in the case of the commission abroad of an offence other than mentioned above, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of imprisonment, and the perpetrator remains within the territory of the Republic of Poland and where no decision on his extradition has been taken.

Article 111 states that the liability for an act committed abroad is, however, subject to the condition that the liability for such an act is likewise recognized as an offence, by a law in force in the place of its commission (§ 1). If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour in the perpetrator (§ 2). The condition provided for in § 1 shall not apply to Polish public official who, while performing his duties abroad has committed an offence there in connection with performing his functions, nor to a person who committed an offence in a place not under the jurisdiction of any state authority.

Article 112 provides that, notwithstanding the provisions in force in the place of the commission of the offence, the Polish penal law shall be applied to Polish citizen or alien in case of the commission of offence against the internal or external security of the Republic of Poland, offence against Polish offices or public officials; offence against essential economic interests of Poland, offence of false statement made before Polish office.

In accordance with Article 113, notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to Polish citizen or alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obliged to prosecute under international agreements.

In accordance with Article 114 § 1 sentencing judgement rendered abroad shall not prejudice criminal proceedings for the same offence from being instituted before Polish court. Paragraph 2 of the said Article stipulates that the court shall credit to the penalty, imposed the period of imprisonment actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

Furthermore, it is provided that the provision of § 1 shall not apply when sentencing judgement rendered abroad has been transferred to be executed within the territory of the Republic of Poland, and also when the judgement rendered abroad considered as offence, with regard to which either a transfer of the prosecution or extradition from the territory of the Republic of Poland has occurred.

Paragraph 4 of the said Article stipulates that if a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence in the territory of the Republic of Poland, the court shall determine, under Polish law, the legal qualification of the act, and the penalty to be executed or any other penal measure provided for in the Code; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, penalty prescribed for such an act under Polish law, period of actual imprisonment abroad, penalty or other measure executed there, and differences between these penalties considered to the favour of the sentenced person.

Interrelationship of Articles 18, 109 – 114 and 258 of the Penal Code

As it was stated in the previous report Article 258 (whose text was made available to the CTC with the original report) applies to each domestic and international organised group aiming at the perpetration of crimes, including terrorist

groups. It provides for criminal responsibility for participation in such groups, being thus the most specific one among the Articles mentioned above.

In accordance with Article 18, which is discussed in more detail in Paragraph 1.2 of the present report, not only perpetrators of crimes are subject to criminal responsibility, but also persons who facilitate the commission of crimes through aiding or abetting.

Articles 109-114 provide for liability of both Polish nationals and aliens under the Polish jurisdiction for crimes committed abroad. Of paramount significance in this case is Article 113 of the Penal Code, which introduces the principle of "universality" of criminal responsibility to the Polish criminal law. In accordance with that principle, the Polish penal law shall be applied to a Polish national or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence, which the Republic of Poland is obliged to prosecute under international agreements (these offences are also criminalized under the Polish penal law).

In terms of the specific requirements of subparagraphs 2 (d) and (e) of resolution 1373 (2001), it could be concluded from the analysis of the set of articles mentioned above that every activity described in these subparagraphs, including facilitation of the commitment of crime, whether directed at Poland and Polish citizens or at other countries and their citizens, should it be committed by individuals or groups, will be subject to the Polish jurisdiction and will be prosecuted and punished under the internal legal order or international agreements, unless other country wishes to prosecute and punish the perpetrator and, in case of admissibility of extradition, its request for extradition is considered positively.

Paragraph 1.10

International agreements concluded by Poland, to which Article 113 of the Penal Code refers, include all the agreements ratified by Poland, which are covered by Article 91 sections 1 and 2 of the Constitution of the Republic of Poland. They are incorporated to the domestic legal order and have to be taken into account by courts.

The offences referred to in resolution 1373 (2001) are prosecutable, criminalized and extraditable offences under many international agreements, including anti-terrorist conventions and protocols, as well as internal legislation. Accordingly, the Polish courts are obliged to interpret the reference made in Article 113 as extending to offences referred to in the resolution, also taking into account that the resolution was adopted by the Security Council acting under Chapter VII of the Charter of the United Nations, which obviously forms part of the internal legal order of Poland.

Paragraph 1.11

Outline of Section XIII of the Penal Proceedings Code

As it was stated in the previous report, Section XIII of the Penal Proceedings Code, is titled: "Procedure in criminal matters in international relations determines the principles of legal assistance to states". Below please find the detailed outline of the provisions of the said Section.

a. Chapter 61: Immunities of persons belonging to diplomatic missions and consular offices of foreign states (Articles 578 – 584)

Articles 578 – 584 exclude from the jurisdiction of Polish criminal courts persons enjoying diplomatic immunity and persons enjoying consular immunities. The said persons may be subject to that jurisdiction if the sending state (or international organisation) waives expressly the immunity in relation with these persons. These articles specify the procedures for obtaining consent to give evidence or being expert or interpreter or consent in case of search of the premises of diplomatic missions or consular offices. The provisions of the said articles are consistent with the Vienna Conventions on diplomatic relations and consular relations.

b. Chapter 62: Legal assistance and delivery of documents in criminal matters (Articles 585 – 589)

Article 585 provides that through legal assistance all necessary actions within criminal proceedings may be carried out, including: delivery of documents to persons resident abroad or institutions having their registered offices

abroad; hearing of persons as accused, witnesses or experts and searching of premises or other places and persons, seizure of objects and issuance of the said objects to foreign countries, exchange of information on the legal provisions, etc.

Courts and prosecutors grant legal assistance upon request of courts and prosecutors of foreign countries. The assistance may be refused if it would be inconsistent with the principles of legal order of the Republic of Poland or would constitute breach of its sovereignty. In particular cases specified in Article 588 § 3 court and prosecutor may refuse to grant legal assistance.

To the proceedings carried out upon request of court or prosecutor of foreign state, Polish laws shall apply. It is possible however to apply procedure or form upon request of the bodies of foreign states, if it is not inconsistent with the principles of the legal order of the Republic of Poland.

c. Chapter 63: Taking over and transfer of criminal prosecution (Articles 590 – 592)

On the basis of Article 590 § 1 in the case of the offence committed abroad by Polish citizen, person having in Poland residence, person who serves or will serve in Poland sentence in prison, person, against whom criminal proceedings have been instituted in Poland, the Minister for Justice applies, if it required by the interest of justice, to the competent organ of foreign state to transfer prosecution or may receive such request from the competent organ of foreign state. Taking over of criminal prosecution shall be deemed institution of criminal proceedings in accordance with the Polish law (Article 590 § 2).

Article 591 § 1 provides that in case concerning the offence committed in Poland by alien the Minister for Justice, applies, if it is required by the interest of justice, to the competent organ of state: whose prosecuted person is citizen, in which such a person has residence, or serves or will serve imprisonment, or in which criminal proceedings have been instituted against that person for taking over of criminal prosecution or may receive such a request from the competent organ of the foreign state. In case of positive settlement of that request the Minister for Justice orders immediate transfer of prosecuted person, if he/she is temporarily arrested, together with the files of the case to the competent organ of foreign state.

The Minister for Justice addresses the competent organ of foreign state to receive information on the means of valid and final conclusion of the criminal proceedings.

In accordance with Article 591 § 6 transfer of criminal prosecution shall be deemed discontinuance of criminal proceedings in accordance with the Polish law.

d. Chapter 64: Application to extradition or transport of prosecuted or sentenced persons resident abroad and surrender of objects (Articles 593 – 601)

In accordance with Article 593 courts and prosecutors make, through the Minister for Justice, requests for extradition by foreign state of person, against whom criminal proceedings have been initiated, for extradition of person in order to carry out judicial proceedings or execute sentenced penalty, for transport of prosecuted or sentenced person through the territory of foreign state as well as for surrender from the territory of foreign state of evidence or objects obtained by the perpetrator as a result of offence. In urgent cases court or prosecutor may address directly competent organ of foreign state.

Foreign state may make reservation that the criminal proceedings may relate only to the offences, in relation with which the extradition or surrender took place. In such case proceedings against the extradited person may not be implemented in relation with other offences committed before the date of extradition.

e. Chapter 65: Applications of foreign states to extradite or transfer of prosecuted or sentenced persons or to surrender objects (Articles 602 – 607)

In accordance with Article 602 in case of a request by organ of foreign state for extradition or transfer of prosecuted person in order to carry out against him/her criminal proceedings or execute sentenced penalty or safeguard measure, the prosecutor shall hear that person, and having done that, submits the case to the competent court of the second instance.

That Article provides for inadmissibility of extradition in the following cases: a person, to whom request refers is Polish citizen or enjoys in Poland asylum, act does not meet characteristics of prohibited act or when law recognises that the act does not constitute an offence or the perpetrator does not commit offence or is not subject to penalty, the case lapsed, criminal proceedings in relation with the same act of that person was terminated with the issuance of valid and binding decision, it would be inconsistent with the Polish law.

In accordance with § 2 of that Article extradition may be denied in particular when: the person, to whom the request relates has residence in Poland; offence has been committed in Poland or on Polish ship or aircraft; to the same act of the same person, in case of which criminal proceedings are underway; offence is prosecutable on the basis of private accusation, in accordance with the law of the requesting state; offence is subject to imprisonment or less restrictive penalty or such penalty was sentenced; offence subject to request is a political, military or fiscal offence; or the requesting state, does not ensure the mutuality.

f. Chapter 66: Taking over and transfer of sentenced persons to serve the sentence (Articles 608 – 611)

In accordance with Article 608 § 1 in case of valid and binding sentence of Polish citizen by court of foreign state for imprisonment, which is enforceable or valid and binding judgment of a measure consisting in imprisonment, Minister for Justice may apply to the competent organ of that state for taking over of the sentenced person or person, in relation with whom the measure has been instituted, with the view to implementing the imprisonment or measure in the Republic of Poland. Similarly, when the sentenced is alien the Minister for Justice may apply to the competent organ of state, which such person is citizen for taking over with the view to serving the sentence or implementation of the measure (Article 610 § 1).

Taking over of the sentence for execution in Poland is inadmissible when: sentence is not valid and binding or is not enforceable; enforcement of sentence would impair sovereignty, security or legal order of the Republic of Poland; person sentenced for prison or person, in relation with which measure has been instituted consisting in imprisonment, does not give its consent for taking over; person sentenced to fine or in relation with whom seizure of property has been decided, non-resident in Poland does not possess property in Poland; act indicated in the request does not constitute act prohibited under the Polish law or does not meet characteristics of prohibited act; when law recognises that the act does not constitute an offence or the perpetrator does not commit offence or is not subject to penalty; the case has lapsed; it would be inconsistent with the Polish law.

In accordance with Article 611 taking over of sentence for execution in foreign state is inadmissible when: sentence is not valid and binding or is not enforceable; person sentenced for prison or person, in relation with which measure has been instituted consisting in imprisonment, does not give its consent for taking over; person sentenced for prison or person, in relation with which measure has been instituted consisting in imprisonment is a person, to whom request refers is Polish national or enjoys in Poland asylum; the case has lapsed, or it would be inconsistent with the Polish law.

After taking over of sentence for execution the court determines legal qualification of the act in accordance with the Polish law and measure, being enforceable.

g. Chapter 67: Final provisions

Article 612 § 1 requires that any case of application of temporary arrest in relation with citizen of other state be informed immediately competent consular office of that state, or when there is no such office – diplomatic mission of that state. In case of detention of alien, the detainee should have right to contact in an available form with competent consular office or diplomatic mission (Article 612 § 2).

Courts and prosecutors, apart from cases provided for in the Code, consult in all the cases relating to the criminal proceedings in international relations through the Minister for Justice and the latter, if needs arise, through the Minister for Foreign Affairs. Courts and prosecutors could contact directly consular offices of foreign state in Poland in the cases determined by the Minister for Justice.

In accordance with Article 615 the provisions of Chapter 67 shall not apply if international agreement, to which Poland is party provides otherwise. They may not be applied in relation with foreign state, with which there is no agreement in this subject matter and if that state does not provide for mutuality. The provisions of

Chapter 67 shall apply accordingly in relations with international courts and their organs, acting on the basis of international agreements, to which Poland is party.

List of extradition treaties

The Republic of Poland has concluded bilateral extradition treaties with the following countries: Australia, Austria, Egypt, Fiji, India, Italy, Luxembourg, Slovak Republic, Swaziland, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States of America.

The Republic of Poland is party to the following multilateral extradition conventions:

- Convention on the Transfer of Sentenced Persons, Strasbourg 1983; ratified 27.09.1994, entered into force for Poland: 1.03.1995.
- European Convention on Extradition, Paris 1957; ratified: 30.04.1993, entered into force for Poland: 13.09.1993.

Relationship between extradition treaties and Section XIII

The provisions of the extradition treaties are consistent with the Section XIII of the Penal Proceedings Code. Some minor differences result from different nature of the said treaties and the Code. The Code itself is a set of provisions having procedural nature, establishing universally binding rules in the Polish criminal proceedings, while the extradition treaties contain, apart from provisions reflecting the rules contained in Section XIII, detailed provisions and procedures, including those related to the co-operation between the parties to a treaty and indicate competent organs and their functions.

Paragraph 1.12

Yes, the treaties listed in Appendix V to the original report of Poland relate to co-operation and mutual assistance between competent institutions rather than to extradition.

Paragraph 1.13

There is no specific timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings is required.

The proceedings with such a request are regulated as a rule in bilateral and multilateral agreements on mutual legal assistance in criminal matters. The said agreements designate "Competent Authority" (or in some cases "Central Authority" – in case of Poland – Ministry of Justice) responsible in the parties to the agreement for the processing with request.

In order to ensure prompt action in criminal matters the agreements mentioned above stipulate that the request of the requesting party should be implemented immediately, and, if necessary, that the request should be transmitted to competent organ (should it be prosecutor's office or court) for necessary action. Competent Authorities consult each other in the matters of the implementation of request, questions of confidentiality and explain to each other the specific issues related to the request. The reasons for delay or suspension of the implementation of request should be conveyed to the Competent Authority of the other party to the agreement.

The statistics on the average timeframe, in which the requests for judicial assistance are implemented in Poland, are not available. This is because of the fact that the requests can differ and the process of implementation depends on the nature and degree of complexity of the requests, manner in which they are transmitted to competent organs in Poland, and even – in some cases – on whether there are special arrangements for closer and decentralised co-operation between the judicial and prosecutor's offices (such arrangements are in place in relation with several countries). In the latter case the procedure is even more simplified and reduced.

However, the Government wishes to confirm that in accordance with the agreements mentioned in this paragraph, as well as internal regulations in force in the Ministry of Justice and prosecutor's offices the requests for legal assistance from other states are indeed dealt with without delay and enjoy priority *vis-à-vis* other requests.

Paragraph 1.14

As it was stated in the previous report, Poland is not yet a party to 4 anti-terrorist conventions and protocol:

1. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

The Convention was signed by Poland on 14 June 1999. The request for ratification has been transmitted by the Ministry of Foreign Affairs to the Council of Ministers, which is processing with it in simplified and urgent procedure, that is without considering it in session. After the lapse of time provided for consultation among ministries (i.e. on January 17, 2003) the request is deemed approved by the Council and the draft law authorising the President of the Republic of Poland will be submitted to the Parliament without delay.

2. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. The Convention was signed on 4 October 2001 during the fifty-sixth session of the United Nations General Assembly.

The information has been provided in paragraph 1.2 of the present report.

3. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.

The request for ratification of the Protocol is still in the phase of preparation. This delay is due to the amendments to the Aviation Law, which entered into force on November 17, 2002. They strengthen *inter alia* the security requirements in airports, facilitating thus the ratification of the said Protocol. Under the amended Aviation Law new competent authority –Civil Aviation Office – has been created, which is authorised to initiate the procedure of ratification. The process is closely monitored.

4. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.

Due to the shift of competencies between the Ministry of the Interior and Administration and Ministry of Economy, Labour and Social Protection in the area of explosives, the request for ratification of the Protocol is still in the phase of preparation. The process is closely monitored also in this case.

Paragraph 2. Assistance and guidance

The Government of Poland wishes to express its gratitude to the Counter-Terrorism Committee for the analysis of Poland's reports and valuable comments related therewith, which assist it in the implementation of the provisions of resolution 1373 (2001). Competent ministries responsible for the implementation of the said resolution also benefit from the information published by the Committee on the United Nations web site and have had the opportunity to discuss and consult on specific issues with other States and bodies also within the United Nations system (including training arranged in co-operation with these bodies), especially in the field of suppression of financing of terrorism.

The Government of Poland is looking forward to further co-operation with the CTC and its experts on the issues that need further consideration with the view to implementing more effectively the provisions of the resolution.

United Nations S/2003/272

Security Council

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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/452).

The Counter-Terrorism Committee has received the attached third report from South Africa, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27549 (E) 170303

Annex

Note verbale dated 30 January 2003 from the Permanent Representative of South Africa to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Republic of South Africa to the United Nations presents his compliments to the Chairperson of the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to respond to the points raised in the latter's letter dated 30 October 2002 (see enclosure). The enclosure constitutes the third report of the Government of South Africa on the steps taken to implement resolution 1373 (2001).

Enclosure

REPLY TO THE LETTER DATED 30 OCTOBER 2002 RECEIVED FROM THE COUNTER-TERRORISM COMMITTEE CONTAINING COMMENTS ON SOUTH AFRICA'S SUPPLEMENTARY REPORT SUBMITTED PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1373 (2001)

Introduction

The South African Government is concerned about perceptions that are created by unsubstantiated statements or advisories by other Governments and the media regarding the potential of terrorist activities in third countries. Such unsubstantiated and selective statements or advisories could not only negatively impact on a country's standing, but also on its security situation. There is a danger that terrorists and terrorist organisations may either exploit such statements or advisories, or may view these as providing indications of opportunities to conduct terrorist activities.

The South African Government therefore calls on the United Nations Security Council to bring these concerns to the attention of the Member States of the Organisation and to impress upon their Governments the need to act responsibly when dealing with such sensitive issues that hold potentially serious consequences. States should desist from issuing general warnings and other statements including travel advisories about unsubstantiated threats of terrorism in other countries. In instances where States obtain information about potential terrorist activities, it is essential for the Governments of those States to alert the Governments of the States where the potential terrorist activity is to take place rather than proceeding to issue a statement or travel advisory without any such consultation. Prior and confidential consultation would allow the States concerned to firstly verify the information and to take the necessary steps to prevent and act against the terrorist threat. The objective here should be to prevent and combat terrorism without creating a climate of fear and insecurity.

The South African Government believes that terrorism is an extremely serious challenge confronting the international community as a whole, which requires all countries to co-operate and work together in order to successfully combat this threat to international peace and security.

Situations where terrorists and terrorist organisations are supported by countries, or where their territories are used as bases of operation, need to be addressed in accordance with the provisions of international law, including the relevant decisions of the United Nations Security Council.

1. Implementation Measures

Question 1

The CTC would welcome:

a) A progress report on the preparation and enactment of the proposed Anti-Terrorism Bill, including, in particular, an indication, as soon as practicable, of the availability of the text of the Bill on the website of the South African Parliament: and

b) A progress report on the implementation of the Financial Intelligence Centre Act, 2002.

Anti-Terrorism Bill

The South African Law Commission officially handed its report on the Anti-Terrorism Bill, to the Minister for Justice and Constitutional Development on 29 August 2002. On 26 September 2002, the Minister for Justice requested the Minister

for Safety and Security to consider the Bill and to submit it to Cabinet, with a view to introducing it in Parliament as soon as possible.

Cabinet approved the Bill for introduction to Parliament in November 2002. The Bill is scheduled to be on the parliamentary programme at the beginning of the 2003 session. The Bill will only be available on the parliamentary website, once it is introduced in Parliament.

The Bill is presently available at:

a) The South African Law Commission's website at:
http://www.server.law.wits.ac.za/salc/report/report.html

b) Unwembi's Resource of South African Government Information at:
http://www.polity.org.za/govdocs/bills/2002/index.html

c) The South African Police Service's website at:
http://www.saps.org.za/legis/index.htm#anti-terror

d) The South African Parliament's website at:
http://www.pmg.org.za/bills/020902terrorismbill.htm

Financial Intelligence Centre Act

The Current position concerning the implementation of the Financial Intelligence Centre Act, 2001 ("the Financial Intelligence Centre Act") is as follows:

Draft regulations to support the operation of the Financial Intelligence Centre Act have been submitted to the Minister of Finance. These were referred by the Minister to the Money Laundering Advisory Council in accordance with the consultative process prescribed in section 77 of that Act. Subsequent to receiving the Council's comments, the Minister promulgated the regulations by notice in the Government Gazette on 20 December 2002. The Regulations were published in Government Gazette number 24176 of 20 December 2002 under Government Notice R1595. They are also available on the website of the National Treasury at:
http: www.treasury.gov.za/legislation/acts/fic/draft_regs.pdf

The regulations, together with the corresponding provisions of the Financial Intelligence Centre Act will take effect in two stages during 2003. It is envisaged that the sections of the Financial Intelligence Centre Act which deal with the reporting of suspicious and unusual transactions, together with the supporting regulations, will commence during February 2003. The Financial Intelligence Centre aims to start functioning in an operational capacity at the same time. It is envisaged further that the sections of the Act which deal with money laundering controls (such as client identification, record-keeping and implementation of internal rules), together with the supporting regulations, will commence during June 2003.

The text of the Financial Intelligence Centre Act is available on the website of the National Treasury at:
http://www.treasury.gov.za/legislation/acts/fic/default.htm

Schedule 1 (the list of Accountable Institutions), Schedule 2 (the list of Supervisory Bodies) and Schedule 3 (the list of Reporting Institutions) of the Financial Intelligence Centre Act came into operation on 1 March 2002.

In order to address the combating of terrorism, amendments to the Financial Intelligence Centre Act are proposed in the Schedule to the Anti-Terrorism Bill.

Question 2

The scenarios set out in paragraphs 22 to 25 of the response in the supplementary report to the first question raised in the letter of 15 April 2002 in relation to sub-paragraph 1 (a) of the Resolution do not appear to be dealt with in the text of the Financial Intelligence Centre Bill that is currently available on the website of the South African Parliament. Are there provisions dealing with those scenarios in the Financial Intelligence Centre Act, 2001, as finally enacted (which has not been posted on the website), or is it proposed that provisions of that kind be inserted in that Act by the Anti-Terrorism Bill?

The following is an extract from section 29 of the Financial Intelligence Centre Act, which contains the duty to report suspicious and unusual transactions:

Quote

Suspicious and unusual transactions

29. (1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that:

(a) the business has received or is about to receive the proceeds of unlawful activities;

(b) a transaction or series of transactions to which the business is a party:

(i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities;

(ii) has no apparent business or lawful purpose;

(iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or

(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or

(c) the business has been used or is about to be used in any way for money laundering purposes, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection (1)*(a)*, *(b)* or *(c)*, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

Unquote

The scenarios referred to in paragraphs 22 to 25 of the response in the supplementary report to the first question raised in the letter of 15 April 2002 in relation to sub-paragraph 1 (a) of the Resolution are provided for in subsections (1)(b) and (1)(c) of section 29 of the Financial Intelligence Centre Act, 2001. A link to the text of the Financial Intelligence Centre Act, 2001, is available on the web page of the Financial Intelligence Centre at the following address:
http://www.treasury.gov.za/legislation/acts/fic/default.htm

Amendments to the *Financial Intelligence Centre Act* to combat terrorism are proposed in the *Anti-Terrorism Bill*. See the Schedule to the *Bill*.

Generic provisions are included in the *Anti-Terrorism Bill*. Clause 4(4) provides, *inter alia*, that the Minister may by notice in the *Gazette* declare an organisation to be a proscribed organisation, if he or she is satisfied on reasonable grounds that the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation.

Question 3

In response to the questions in the letter of 15 April 2002 relating to the use of lists of terrorists and terrorist organisations, the supplementary report indicates that action has been taken on the basis of the lists obtained from the UN Security Council Sanctions Committee on Afghanistan but the view is taken that 'it is not clear whether these lists would suffice for the identification or targeting of terrorists and terrorist organisations/entitles for purposes of implementing paragraph 1 ... comprehensively'. The CTC agrees that reliance on those lists for those purposes is not entirely satisfactory and would be grateful for an indication whether consideration has been given to including in the proposed Anti-Terrorism Bill provisions that would give effect to paragraph 1 generically rather than by reliance on lists.

Generic provisions have been included in the Anti-Terrorism Bill. Clause 4(4) provides, *inter alia*, that the Minister may, by notice in the Government Gazette, declare an organisation to be a proscribed organisation, if he or she is satisfied, on reasonable grounds that the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation.

Question 4

The supplementary report makes reference, in relation to the transfer of funds for the financing of terrorism through charitable, religious or cultural organisations, to the action taken on information obtained on an *ad hoc* basis in respect of suspicious transfers. Is any legislation in force, or proposed, requiring the registration or audit of such organisations? In this connection, the CTC would welcome a progress report on the work of the South African Intelligence community that is mentioned in paragraph 4 of the comments in the supplementary report in relation to sub-paragraph 1 (d) of the Resolution.

Anti-Terrorism Bill

The Anti-Terrorism Bill criminalises participation in, contribution to, or facilitation of terrorist activities. The Bill also sets out that participating in, or contributing to the activities of a terrorist organisation includes collecting, providing or making available, directly or indirectly, property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation.

The South African Intelligence Community continues to explore avenues to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisations. Organisations identified as possibly having ties with terrorism are put under surveillance and investigated.

All allegations of terrorist-related activities are followed up. All information is gathered and analysed. A mechanism exists for a court directed investigation to be instigated. These matters are dealt with in terms of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001) which has the following provisions:

Quote

Section 28. Cash transactions above prescribed limit:

An accountable institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount:

(a) is paid by the accountable institution or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or

(b) is received by the accountable institution or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

Section 29. Suspicious and unusual transactions:

(1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that:

(a) the business has received or is about to receive the proceeds of unlawful activities;

(b) a transaction or series of transactions to which the business is a party:

(i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities;

(ii) has no apparent business or lawful purpose;

(iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or

(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or

(c) the business has been used or is about to be used in any way for money laundering purposes must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection (1)(a), (b) or (c), must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

Section 31. Electronic transfers of money to or from Republic:

If an accountable institution through electronic transfer sends money in excess of a prescribed amount out of the Republic or receives money in excess of a prescribed amount from outside the Republic on behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer, together with the prescribed particulars concerning the transfer, to the Centre.

Section 72. Act not to limit powers of investigating authorities or supervisory bodies:

This Act does not detract from:

(a) an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations.

Unquote

Nonprofit Organisations Act 71 of 1997

The registration and regulation of the activities of nonprofit or charitable organisations is set out in the Nonprofit Organisations Act 71 of 1997. Registration of these organisations is voluntary. The explanatory memorandum to the Nonprofit Organisations Bill explained that the Bill sought to complement attempts by government and other relevant stakeholders to create an enabling environment for nonprofit organisations, and the Bill attempted to bring legislation affecting nonprofit organisations into line with constitutional guarantees of free association and the general principle of encouraging a vibrant and accountable civil society.

The *Nonprofit Organisations Act* applies to nonprofit organisations that choose to subject themselves to the Act. The Act defines a nonprofit organisation as "a trust or association of persons — established for a public purpose; and the income and profits of which are not distributable to its members, or office-bearers directors, except as reasonable compensation for services rendered". In terms of this definition, the determinate factor is not the making of profit but rather its non-distribution. The Act imposes an obligation on the State to determine and co-ordinate its efforts in relation to nonprofit organisations.

The Act created a new system for administering nonprofit organisations by providing for a voluntary system of registration. It was considered that the voluntary system of registration comes with certain advantages, *viz.* it promotes the attraction of donor confidence and legitimacy; access to further benefits and allowances; and State recognition of the "nonprofit" sector. In exchange for these benefits, certain obligations were imposed on registered nonprofit organisations, *viz.* the keeping of proper books of account; the completion of a report by an accounting officer; and the submission of narrative reports and financial statements. According to section 18 of the Act, the narrative reports and financial statements must be provided annually to the Director of Nonprofit Organisations. According to section 8 of this Act, the Director of Nonprofit organisations is an employee of the national department responsible for welfare who is designated for this purpose by the Minister for Welfare and Population Development. The submission of reports and financial statements created mechanisms to ensure that a nonprofit organisation complies with its constitution and the Act. The Director of Nonprofit Organisations must also keep a register in the prescribed form of all nonprofit organisations that have been registered, all nonprofit organisations whose registrations have been cancelled, and all nonprofit organisations that have voluntarily deregistered or have been wound up or dissolved.

Income Tax Act 58 of 1962

Suspicious activities of nonprofitable or charitable organisations could come to light should they apply for tax exemption, as the receipts and accruals of public benefit organisations which have been approved by the Commissioner for the South African Revenue Service in terms of the Income Tax Act 58 of 1962 is exempt from tax. The Income Tax Act defines public benefit organisations as follows:

Quote

'Public benefit organisation' means any organisation:

a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act 61 of 1973), or a trust or an association of persons;

b) of which the sole object is carrying on one or more public benefit activities (including any undertakings or activities which are not prohibited under subsection (3)(b)(iv)), where:

   (i) all such activities are carried on in a nonprofit manner and with an altruistic or philanthropic intent;
   (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and
   (iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise; and

(c) Where:

   (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
   (ii) each such activity carried on by that organisation is for the benefit of, or is readily accessible to, the poor and needy; or

(iii) that organisation is at least 85 per cent funded by donations, grants from any organ of state or any foreign grants.

Unquote

The *Income Tax Act* provides that, on the registration of nonprofit organisations, the Commissioner shall, for the purposes of the Act, approve a public benefit organisation which has, within such period as the Commissioner may determine, been registered in terms of section 13(5) of the *Nonprofit Organisations Act*, 1997, and complied with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Nonprofit Organisations on good cause shown, otherwise directs.

Following the reporting of any suspicious transaction, an investigation into the acquiring and distribution of the organisation's funds is done.

The most important problem faced by the Intelligence Community is the difficulty in investigating the money trail after a transaction has taken place. Once money has been transferred to a business/organisation or person outside South Africa, the further trail of those funds cannot always be followed.

Question 5

The CTC notes that 'South Africa does not have provisions for specifically regulating *hawala* money-transfer agencies'. Is there any provision in South African law having the effect of outlawing *hawala* transactions? The CTC would also welcome information on the controls that apply to non-bank money-transfer agencies such as 'wire services'.

The provisions of Regulation 3(1)(d) and Regulation 10(1)(c) of the Exchange Control Regulations have the effect of outlawing any unauthorised transactions and similar mechanisms, including *hawala*, in respect of all cross border transactions. *Hawala* transfers to known terrorist organisations and organisations supporting terrorist activities, would therefore not take place.

The United Nations Consolidated List issued pursuant to Security Council resolutions 1267 (1999), 1333 (2000) and 1390 (2002) is circulated to all relevant Government Departments and institutions for implementation as and when updated by the relevant Security Council Committee.

Regulation 3(1)(d)

Quote

Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose –

draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) on the part of such person or any other person to receive a payment in the Republic is created or transferred as consideration:

(i) for the receiving by such person or any other person of a payment or the acquisition by such person or any other person of property, outside the Republic; or

(ii) for a right (whether actual or contingent) on the part of such person or any other person to receive a payment or acquire property outside the Republic; or make or receive any payment as such consideration.

Unquote

Regulation 10(1)(c)

Quote

> No person shall, except with permission granted by the Treasury and in accordance with such conditions as the Treasury may impose enter into any transaction whereby capital or any right to capital is directly or indirectly exported from the Republic.

Unquote

In addition the *Anti-Terrorism Bill* provides that participating in or contributing to the activities of a terrorist organisation includes collecting, providing or making available, directly or indirectly, property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation. Property is defined as follows in the Bill:

Quote

Property:

(1) means real or personal property of any description, and whether tangible or intangible; and

(2) includes an interest in any real or personal property; and

(3) includes funds, cash, assets or any other property, tangible or intangible, however acquired; and notably any type of financial resource, including cash or the currency of any State, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form; and

(4) includes any letter or document conferring or containing any evidence of rights in respect of any security.

Unquote

The effect of the provision on the making available of financial or other related services is to outlaw the use of *hawala* systems to transfer funds to terrorist organisations.

The FATF Working Group on Terrorist Financing will be meeting on 13 and 14 January 2003 to consider, among others, alternative remittance systems including *hawala*. It is anticipated that South Africa will be represented at this meeting.

There is currently not any regulated entity providing "wire services" that carries on the business as a "money remitter" for cross-border transactions in South Africa, other than "Authorised Dealers". This mechanism is detailed in paragraph 1 of South Africa's National Report (S/2001/1281).

Question 6

As indicated above, the CTC looks forward to further information on the content of, and progress with, the proposed Anti-Terrorism Bill. In that connection and in view of the remarks in the supplementary report with regard to the notions of 'preparation', it should be borne in mind that effective implementation of this paragraph requires States to criminalize the financing, planning, facilitating and committing of terrorist acts including, in particular, those directed against other states or their citizens. As regards acts of financing, planning and facilitating terrorist acts that are committed in South Africa, it is important to ensure that they are criminalized regardless of whether the related terrorist act is actually committed or attempted and, in the case of the collecting or contributing of funds within South Africa, whether any attempt, successful or otherwise, is made to transmit them to another country. Please comment on South Africa's approach to these points.

Clause 3 of the Anti-Terrorism Bill criminalises participation in and facilitation of terrorist acts. Clause 3 (1) provides, among others, that any person who "*does anything which will, or is likely to, enhance the ability of any terrorist organisation to facilitate or carry out a terrorist act*" is guilty of an offence.

This is a very wide provision and will include the planning of terrorist acts, or, of methods to facilitate terrorist acts. In terms of sub-clause (3) this phrase expressly includes "*collecting, providing or making available, directly or indirectly, property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation*".

Clause 3 (2) of the Anti-Terrorism Bill makes it clear that the offence of participation in and facilitation of terrorist acts may be committed whether or not a terrorist organisation actually facilitates or carries out a terrorist act, the participation or contribution of the accused actually enhances the ability of a terrorist organisation to facilitate or carry out a terrorist act, or the accused knows the specific nature of any terrorist act that may be facilitated or carried out by a terrorist organisation.

Question 7

The CTC would welcome confirmation that the Anti-Terrorism Bill will include provisions dealing with 'deceptive recruitment', as described in the question relating to sub-paragraph 2 (b) in the letter of 15 April 2002.

Any form of recruiting and also *deceptive recruitment* is addressed in clause 3(3):

Quote

Without limiting the generality of subsection (1), participating in or contributing to the activities of a terrorist organisation includes providing, receiving or recruiting a person to receive training.

Unquote

This includes recruiting a person to collect funds on behalf of a terrorist organisation. Clause 3(1) deals with instances where any person **knowingly** participates in, or contributes to, the activities of a terrorist organisation or does anything which will, or is likely to, enhance the ability of any terrorist organisation to facilitate or carry out a terrorist act. Clause 1(2) and (3) also defines the term *knowledge* as follows:

Quote

(2) For the purposes of this Act a person has knowledge of a fact if:
- (a) the person has actual knowledge of that fact; or
- (b) the court is satisfied that:
  - (1) the person believes that there is a reasonable possibility of the existence of that fact; and
  - (2) the person fails to obtain information to confirm or refute the existence of that fact.

(3) For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both:

(5) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and

(6)the general knowledge, skill, training and experience that he or she in fact has.

Unquote

Question 8

The CTC would also welcome confirmation that, with the passage of the Anti-Terrorism Bill, it will be possible according to South African law to prosecute or extradite a foreign national who has committed a terrorist act outside South Africa against another state or its citizens and is found in South Africa, in order to fulfil the requirement of sub-paragraph 2 (e).

Clauses 14 and 15 of the Anti-Terrorism Bill address this issue as follows:

Quote

14(1) The Courts of the Republic shall have jurisdiction in respect of any offence referred to in this Act, if:

(a) the alleged perpetrator of the offence is arrested in the territory of the Republic, in its territorial waters or on board a ship registered in the Republic or an aircraft registered in the Republic; and

(b) the offence has been or is committed:
- (i) in the territory of the Republic, or committed elsewhere, if the act is punishable in terms of the domestic laws of the Republic, including this Act or in terms of the obligations of the Republic under international law;
- (ii) on board a vessel or a ship or fixed platform registered in the Republic or an aircraft which is registered under the laws of the Republic at the time the offence is committed;
- (iii) by a citizen of the Republic or a person ordinarily resident in the Republic;
- (iv) against a citizen of the Republic or a person ordinarily resident in the Republic;
- (v) outside of the Republic, and the person who has committed the act is, after the commission of the act, present in the territory of the Republic; or
- (viii) on board an aircraft in respect of which the operator is licenced in terms of the Air Services Act 1990 (Act No 115 of 1990) or the International Air Services Act 1993 (Act No 60 of 1993); or

(c) the evidence reveals any other basis recognised by law.

(2)Whenever the National Director receives information that there may be present in the Republic a person who is alleged to have committed an offence under the Act, the National Director must:
- (1) order an investigation to be carried out in respect of that allegation;
- (2) inform any other foreign State which might also have jurisdiction over the alleged offence promptly of the findings of the investigation; and
- (3) indicate promptly to other foreign States which might also have jurisdiction over the alleged offence whether he or she intends to prosecute.

(3) In deciding whether to prosecute, the National Director shall take into account:
- (1) considerations of international law, practice and comity;
- (2) international relations;
- (3) prosecution action that is being or might be taken by a foreign State; and
- (4) other public interest considerations.

(4) If a person has been taken into custody to ensure the person's presence for the purpose of prosecution or surrender to a foreign State in terms of section 15, the National Director must, immediately after the person is taken into custody, notify any foreign State which might have jurisdiction over the offence

concerned, and any other State the National Director considers it advisable to inform or notify either directly or through the Secretary-General of the United Nations, of:

(a) the fact that the person is in custody; and
(b) the circumstances that justify the person's detention.

(5) When the National Director declines to prosecute, and another foreign State has jurisdiction over the offence concerned, he or she must inform such foreign State, accordingly with the view to the surrender of such person to such foreign State for prosecution by that State.

Unquote

Question 9

Sub-paragraph 3 (g) calls upon States 'to ensure, in conformity with international law, … that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists'. The supplementary report states that section 11 of the Extradition Act 'provides for refusal to extradite on, as one of the grounds "political opinion"' and that 'bilateral treaties do provide for refusal to extradite on political grounds'. The CTC would be grateful for an explanation of how South Africa proposes, in the light of those provisions, to meet the requirement of sub-paragraph 3 (g).

Extradition Act

The matters referred to in paragraph 1.10 of the Counter-Terrorism Committee's letter dated 30 October 2002 (S/AC.40/2002/MS/OC.181) are dealt with in sub-paragraph (b)(iv) of section 11 of the Extradition Act, 1962.

Section 11 of the Extradition Act, 1962 provides as follows:

Quote

Minister may order or refuse surrender to foreign state.

11. The Minister may:

(a) order any person committed to prison under section 10 to be surrendered to any person authorised by the foreign State to receive him or her; or
(b) order that a person shall not be surrendered:

(i) where criminal proceedings against such person are pending in the Republic, until such proceedings are concluded and where such proceedings result in a sentence of a term of imprisonment, until such sentence has been served;
(ii) where such person is serving, or is about to serve a sentence of a term of imprisonment, until such sentence has been completed;
(iii) at all, or before the expiration of a period fixed by the Minister, if he or she is satisfied that by reason of the trivial nature of the offence or by reason of the surrender not being required in good faith or in the interests of justice, or that for any other reason it would, having regard to the distance, the facilities for communication and to all the circumstances of the case, be unjust or unreasonable or too severe a punishment to surrender the person concerned; or
(iv) if he or she is satisfied that the person concerned will be prosecuted or punished or prejudiced at his or her trial in the foreign State by reason of his or her gender, race, religion, nationality or political opinion.

Unquote

It follows that a request for extradition cannot be refused on the basis of a claim that the offence, for which extradition is sought, was committed for political reasons. Sub-paragraph (b) (iv) of Section 11 of the Extradition Act only allows a discretionary power for the Minister to order that a person shall not be surrendered if the extradition request itself is made with a view to punish the fugitive because of, among others, his or her political opinion, or that the fugitive will be prejudiced at his or her trial because of these reasons.

The Minister's decision is taken at an executive level, as opposed to a judicial level, and is only taken after a court has found a person liable to be surrendered at an extradition hearing. This means that issues such as the provisions of Resolution 1373 (2001) of the UN Security Council will necessarily have to be taken into account by the Minister when exercising his or her discretion.

Furthermore Section 233 of the Constitution of South Africa provides as follows: *"When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law".*

Section 39(1)(b) and (c) of the Constitution further provides that a court, tribunal or forum must consider international law and may consider foreign law when interpreting the Bill of Rights. Therefore, conventions on terrorism, which exclude political offence as a ground for refusing extradition, do form part of South African law.

Extradition will be refused if a person extradited will face a death penalty, unless the requesting State provides assurances that the death penalty will not be imposed, or, if imposed, will not be carried out. (See Mohamed and Another v President of the RSA and Others 2001(7) BCLR 685 (CC)).

It is the intention of the Department of Justice and Constitutional Development to review the Extradition Act to bring it in line with the Constitution and international standards.

The effect of the above provision is that the Extradition Act will not be read in isolation when a decision has to be taken.

Bilateral Treaties

Although bilateral treaties do provide for refusal to extradite on "political grounds', the following offences are, *inter alia,* specifically excluded,

Quote

(a) a murder or other violent crime against a Head of State or Deputy Head of State of the Requesting or Requested State, or of or against a member of such person's family;
(b) an offence for which both the Requesting and Requested States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their respective competent authorities for decision as to prosecution;
(c) murder;
*(d) **terrorism offences;***
(e) an offence involving kidnapping, abduction or any form of unlawful detention, including the taking of a hostage; and
(f) attempting or conspiring to commit, aiding, abetting, inducing, counselling or procuring the commission of, or being an accessory before or after the fact to such offences.

Unquote

Anti-Terrorism Bill

The fourth preambular paragraph of the Anti-Terrorism Bill specifically determines that claims of political motivation would not be recognised. It provides that terrorist acts are under any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them. This provision will also apply to requests for the extradition of terrorists.

Commonwealth London Scheme

It must be noted that at the 13th meeting of Commonwealth Ministers of Justice in St Vincent and the Grenadines from 18 to 23 November 2002, which was also attended by the South African Minister of Justice and Constitutional Development, in a unanimous agreement, Ministers took a major step by removing the political offence exemption from the London Scheme for extradition. This scheme provides a framework for extradition arrangements for all Commonwealth Countries. Once implemented in domestic law, this decision will further strengthen the legislative framework to remove the possibility of terrorists avoiding extradition by claiming their action was politically motivated.

Conclusion

It is clear from the above that South Africa will be in a position to satisfy the requirements of paragraph 3 (g).

Question 10

The CTC would welcome a progress report on the enactment of the amendments of the Civil Aviation Offences Act, 1972 for the purpose of giving full effect in South Africa to those of the relevant conventions that are relevant to compliance with the Resolution.

The proposed clause amending the Civil Aviation Offences Act is contained in the Schedule to the Anti-Terrorism Bill and will therefore be dealt with as part of the Bill.

2. Assistance and guidance

Question 11

The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the Resolution. It encourages the Government of South Africa to inform the CTC of any areas in which assistance or advice might be of benefit in taking forward the implementation of the Resolution in South Africa, or of any areas in which South Africa might be in a position to offer assistance or advice to other States on the implementation of the Resolution. The CTC maintains a Directory of Information and Sources of Assistance in the field of Counter-Terrorism on which all relevant information on available assistance is posted. It can be found on the CTC's website (www.un.org/sc/ctc). The CTC's Technical Assistance Team is available to discuss any aspect of the provision of assistance and can be contacted as in paragraph 3.1, below.

The South African authorities encounter difficulties in following the trail of financial transactions once money is transferred to another country. These difficulties impact negatively on court-directed investigations into the transactions, because of the inability in certain circumstances, for the investigating authorities to either conduct investigations in such third countries, or to establish contact with reliable officials in those countries who could pursue the investigations and provide the necessary information.

International co-operation and assistance in identifying reliable contact persons in the relevant investigative agencies in third countries would significantly enhance the ability of the South African authorities to follow up such investigations.

For such investigations to result in successful prosecutions in South Africa, it is necessary for the court-required information to be collected by experienced and knowledgeable officials and must also be gathered in accordance with the evidentiary requirements of the specific court where the case will be heard.

Question 12

The CTC notes that there is no mention in the reports submitted by South Africa of areas in which it might be in a position to provide assistance to other States, and particularly those in its region, in connection with the implementation of the Resolution.

South Africa has to date provided assistance to other States in the context of its active participation in multilateral fora. For example, South Africa is active in the Southern African Police Chiefs Co-operation Organisation (SARPCCO) which has Legal and Operational Subcommittees, in which issues such as anti-terrorism legislation, firearms, explosives and other related issues are addressed.

South Africa also actively participated in the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa held in Algiers from 11-14 September 2002.

South Africa more recently participated, as facilitator, in a workshop in Gaborone, hosted by the Commonwealth Secretariat from 4 to 8 November 2002, and attended by 13 Southern and Eastern African countries, to consider legislative measures to combat terrorism and implement Security Council resolution 1373 (2001). Legislative action that has been taken in other Commonwealth jurisdictions such as Mauritius and the South African proposed Anti-Terrorism Bill as well as the Commonwealth Model Legislative Provisions on Measures to Combat Terrorism were considered during the workshop.

At this stage the CTC will be focusing on requests for assistance that relate to 'Stage A' matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the Resolution is a matter for agreement between them. The CTC would be grateful to be kept informed of any such arrangements and on their outcome.

The South African Government will inform the CTC of any bilateral arrangements regarding assistance on "Stage A matters" as and when they take place.

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Security Council

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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/407).

The Counter-Terrorism Committee has received the attached third report from Liechtenstein, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27568 (E) 170303

Annex

Note verbale dated 10 February 2003 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents his compliments to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) and has the honour to transmit the third report on the implementation of resolution 1373 (2001) by Liechtenstein in response to the additional questions of the Committee (see enclosure).

Enclosure

Third Report of the Principality of Liechtenstein to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001)

1. Introduction

Liechtenstein submits the following additional information to the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism (CTC), pursuant to the letter of the CTC in this regard of 30 October 2002 (previous reports are contained in the documents S/2002/1253 of 27 December 2001 and S/2002/788 of 26 June 2002). Liechtenstein continues to give highest priority to the work of the CTC and follows the developments concerning the CTC with great attention. The Government of Liechtenstein hopes that the submission of this additional information will have fulfilled the requirements of "Stage A".

Before answering the questions below, the following general information should be mentioned: In April 2003, the Liechtenstein Parliament (Landtag) will discuss a package of legislation on combating terrorism. This package includes the ratification of the UN Convention for the Suppression of the Financing of Terrorism and will effect an improved implementation of Security Council resolution 1373. The planned legislative amendments can be found in the Annex and will be discussed below in connection with the relevant questions of the CTC.

2. Subparagraph 1.1.:

"The effective implementation of Paragraph 1 of the Resolution requires that professions that are involved in financial transactions (such as lawyers and accountants) be put under legal obligation to report suspicious transactions and subjected to penalties for non-compliance. Articles 9 and 9 (a) of the Due Diligence Act seem to impose such an obligation only in the context of first business contacts. How does Liechtenstein ensure that such reporting obligations apply also in the course of subsequent business activities?"

The Due Diligence Act (Sorgfaltspflichtgesetz, SPG) first requires financial intermediaries to engage in a complete verification of a business relationship upon initiation of the business relationship (article 4: Identification of the contracting party; article 5: Determination of the beneficial owner; article 10: Establishment of the client profile, etc.) and then to verify every single transaction in the ongoing business relationship (article 9 paragraph 1). This verification includes in particular the obligation to check individual transactions with the established client profile. In every case, the entire relationship with the client is subject to the required permanent verification by the financial intermediary. This ensures that any suspicious transactions arising in the course of the ongoing business relationship are reported to the FIU (article 9 paragraph 2). This notification duty continues for the entire duration of the business relationship. In particular, it is not permitted to terminate a client relationship solely for the purpose of avoiding the notification duty, even though in the particular case the preconditions for reporting a suspicion would actually have been met.

In addition, the financial intermediary has the right to submit a notification to the FIU even prior to initiation of the business relationship, upon mere business contact (article 9a SPG).

The due diligence requirements of the Due Diligence Act, and in particular the notification duty according to article 9, are therefore not limited to the initiation of the business relationship, but rather are applied at every stage of the business relationship.

3. **Subparagraph 1.3.:**

"Effective implementation of this paragraph also requires the existence of legal provisions or administrative measures to ensure that funds and other economic resources collected by non-profit organisations (e.g. religious, charitable or cultural organisation) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in Liechtenstein and, if not, how Liechtenstein proposes to monitor the use of funds etc. by non-profit organisations."

The Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (signed by Liechtenstein on 2 October 2001) specifies that even attempted financing of terrorism within the meaning of the Convention shall be criminalized and that the punishability of financing of terrorism shall not be made dependent on the actual use of the financial means for perpetrating one of the named criminal acts. The new article 278d of the Criminal Code (Strafgesetzbuch, StGB), which constitutes part of the anti-terrorism package mentioned above, serves as a catch-all offense for this purpose. The provision and collection of assets for the purpose of perpetrating a criminal act listed in the individual subparagraphs shall be punishable. Assets also include in particular legally relevant papers and documents in any form (including electronic and digital) substantiating the right to such assets or rights pertaining to such assets. Indirect intent is sufficient for commission of the act as is the intent to use the provided or collected means only partially for the incriminated purpose.

In addition, article 107 paragraph 5 and article 124 of the Liechtenstein Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) already apply: Article 107 paragraph 5 PGR states that associations of persons (and therefore also charitable organizations) whose objects are immoral or unlawful may not, by virtue of the law, acquire the right of legal personality. Article 124 specifies the applicable procedure.

4. **Subparagraph 1.4.:**

"In the context of sub-paragraph 2 (a) of the Resolution, could Liechtenstein please explain how it criminalises the recruitment of members of terrorist groups both inside as well as outside Liechtenstein as distinct from the criminalisation of association with such a group?"

§§ 15 and 12 StGB as well as the planned introduction of §§ 278b and 278c StGB in the framework of the anti-terrorism package are relevant in this respect (Annex):

§ 278b newly introduces the criminal offense of terrorist group: mere participation as a member of a terrorist group will be punishable. A person is considered to participate as a member if, inter alia, he or she participates in the activities of the

group "by supplying information or otherwise with knowledge of the fact that such participation will contribute to the group or its criminal activities" (cf. the definition of participation in § 278a paragraph 2, to which § 278b paragraph 2 refers). Whoever recruits other persons for terrorist purposes is therefore punishable according to § 278b paragraph 2 (as indicated also in the Government's explanation of the legislative proposal).

Furthermore, proposed § 278c StGB is relevant in this context, which increases the penalty applicable to certain general offenses (murder, bodily injury, etc.) by half, if they have been committed as acts of terrorism. Acts of recruitment connected to a concretely planned "terrorist offense" may under certain circumstances be punishable as abetting: abettors are considered as perpetrators in accordance with § 12 StGB.

A person recruited may be considered punishable for attempted participation in the terrorist organization (§ 15 in connection with § 278a StGB), even when the person has not actually participated in the terrorist group (and therefore the preconditions of § 278a StGB have not been met). Insofar as recruitment for the purpose of a concretely planned offense occurs, the recruited person may under certain circumstances also be prosecuted for attempting other punishable acts (e.g., murder as a terrorist offense, § 75 in connection with § 278c StGB).

The penal provisions mentioned here are also applicable to offenses committed abroad according to the planned amendment to § 64 paragraph 1 StGB (please cf. the legislative text in the Annex for details).

5. **Subparagraph 1.5.:**

"Please outline the existing or proposed legal provisions that, in addition to the recommended amendment of § 64 of the Criminal Code, criminalise the use of Liechtenstein territory for the purpose of financing, planning, facilitating or committing terrorist acts against other states or their citizens. Effective implementation of sub-paragraphs 2(d) and (e) of the Resolution requires that such provisions should be incorporated in the penal law of Liechtenstein."

The anti-terrorism package includes the following legal amendments, which will be debated in Parliament in April. The purpose of the anti-terrorism package is the implementation of the UN Convention for the Suppression of the Financing of Terrorism and of UN Security Council resolution 1373 (2001). In addition, it takes into account the EU Council Framework Decision of 13 June 2002 on Combating Terrorism (Official Journal of the European Communities, L. 164, page 3, 22 June 2002).

The following new offenses shall be introduced in the Criminal Code (Strafgesetzbuch, StGB):

- § 278 b: Terrorist group (see para. 4 of the present report)
- § 278 d: Financing of terrorism (see para. 3)
- § 278 c: "Collective classification of terrorist offenses" (see para. 4)

Supporting these measures, terrorist groups will be taken into account in the forfeiture of unlawful enrichment (§ 20), and terrorist groups and financing of terrorism will be taken into account in the forfeiture of assets (§ 20b, 20c).

In addition, the list of predicate crimes for money laundering will be expanded to include the new § 278d (Financing of terrorism).

The amendment of § 64 has already been mentioned in the question. This amendment concerns the extension of domestic jurisdiction to terrorist groups and financing of terrorism.

6. **Subparagraph 1.6.:**

"Sub-paragraph 3 (d) of the Resolution requires all States to become parties as soon as possible to all the relevant international convention and protocols relating to terrorism. The CTC would appreciate receiving information on the progress made by Liechtenstein in becoming a party to the following conventions and protocols:

- the Convention on the Marking of Plastic Explosives for the Purpose of Detection,
- the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,
- the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,
- the International Convention for the Suppression of Terrorist Bombings and
- the International Convention for the Suppression of the Financing of Terrorism."

Since 26 November 2002, Liechtenstein has been a State Party to 11 of the 12 international conventions on combating terrorism. In 2002, Liechtenstein ratified four of these instruments (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988, Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1 March 1991, International Convention for the Suppression of Terrorist Bombings of 15 December 1997).

In view of the ratification of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, the necessary legislative amendments have been prepared in the framework of the anti-terrorism package. The Convention is intended to be submitted for ratification in conjunction with the legislative proposal.

7. **Subparagraph 1.7.:**

"Please provide the CTC with a copy of the amendments to the Penal Code and other relevant laws and regulations of Liechtenstein on anti-terrorism, once enacted. In this context, the CTC would be interested to know when these amendments are expected to enter into force."

The anti-terrorism package and the ratification of the Convention for the Suppression of the Financing of Terrorism will be discussed in the April 2003 session of Parliament. Liechtenstein will submit all relevant legal amendments to the CTC (the drafts for the session of Parliament are annexed to this report).

8. Efforts to provide technical assistance to other countries and organization

Soon after the adoption of resolution 1373, Liechtenstein offered the assistance of a financial expert. This offer has not yet been accepted, but Liechtenstein's offer stands. In light of the importance of this topic, Liechtenstein has also been active in this and related areas in other bodies:

The Director of the Financial Intelligence Unit (FIU) of Liechtenstein is a member of the bureau of the Moneyval group of the Council of Europe, which deals with issues of money laundering and financing of terrorism. In the framework of Moneyval, monitoring activities are undertaken and technical assistance is provided where needed.

In the framework of the Egmont Group (association of Financial Intelligence Units, currently 69 members), the Liechtenstein FIU maintains regular contact with FIUs worldwide, in particular for the purpose of exchanging information. As a member of the Outreach working group, Liechtenstein has also sponsored the acceptance of the FIUs of other countries as new members. The Egmont Group has named the Director and the Deputy Director of the Liechtenstein FIU as experts for the programs of the International Monetary Fund concerning money laundering and the suppression of the financing of terrorism.

10 February 2003

United Nations S/2003/274

Security Council

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6 March 2003

Original: English

Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1287).

The Counter-Terrorism Committee has received the attached third report from Denmark submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27791 (E) 140303

Annex to the letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

Letter dated 14 February 2003 from the Permanent Representative of Denmark to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reply to your letter of 15 November 2002 requesting a further report on the Danish implementation of resolution 1373 (2001), I take pleasure in forwarding the said report for circulation as a document of the Security Council (see enclosure).

(*Signed*) Ellen Margrethe **Løj**
Ambassador
Permanent Representative of Denmark to the United Nations

Enclosure

Supplementary report of Denmark of 14 February 2003, submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

DATE OF SUBMISSION	**14 February 2003**
POINT OF CONTACT	Ministry of Foreign Affairs, JT.F 2, Asiatisk Plads DK-1448 Copenhagen K Denmark Tel: +45 33 92 00 00 Fax +45 32 54 05 33 Email: um@um.dk

Introduction

On 27 December 2001 and 8 July 2002 Denmark has submitted reports pursuant to paragraph 6 of Security Council Resolution 1373 (2001) to the Committee established by the Security Council – the Counter Terrorism Committee. In a letter dated 15 November 2002, the Counter Terrorism Committee has posed a number of further questions to the Danish Government regarding Denmark's fulfilment of UN Security Council Resolution 1373 (2001).

1. Implementation measures

Question 1.2

From the supplementary report it appears that Denmark has no provisions or procedures explicitly dealing with a monitoring mechanism for the collection and use of funds by non-profit organizations (e.g. religious, charitable and cultural organizations) so as to prevent the funds from being diverted to terrorist purposes (as distinct from the provisions of a more general application, mentioned in the report). Since an appropriate monitoring mechanism is needed for preventing and suppressing the financing of terrorism, could Denmark please comment on what action it proposes to take in this regard.

The public collection of funds in Denmark is regulated in the Public Collections Act. The Act prescribes a monitoring mechanism for the public collection of funds and the use of such funds. Furthermore, the Ministry of Justice has issued an Order regarding Public Collections. The order contains provisions regarding the procedure for public collections and the control of the use of collected funds.

The definition of "public collection" is to be found in section 1 (2) of the Public Collections Act. Thus, a collection is public if the request for contribution is addressed to persons who are not personally acquainted with the initiators of the collection, or persons who do not have a special connection with the persons or the institutions for whose benefit the collection is initiated.

According to section 1 (1) of the Public Collections Act the police must be notified before a public collection of funds is initiated.

Section 2 of the order contains provisions, which specify the requirements for the form and the content of the notification to the police. The notification to the police must contain information about the persons or the institutions etc. responsible for the collection. Furthermore, the notification must state the period of time during which the collection will take

place as well as the area where the collection will take place. The notification must also include information about the manner in which the collection will be performed and information about the purpose for which the collected funds will be used.

It should be noted that the requirement of notif :ation to the police does not imply issue of an authorization or prior approval of the purpose of the collection. Thus, it is left to the population to decide whether a certain purpose should be supported.

Public collections can only be arranged in order to support a legal purpose. The notification procedure ensures that the police receives the necessary information about the purpose of the collection and thus will be able to assess the legality of the purpose.

Collected funds can only be used for purposes different from those stated in the notification to the police by permission from the Ministry of Justice, cf. section 4 (2) of the order.

Proper accounts of all profits and expenses in relation to the collection must be kept, cf. section 5 (1) of the order. The accounts must be revised by a state-authorized public accountant or by a registered accountant. The administrative expenses and the use of the profits must be specified in the accounts. The accountant must control whether the necessary documentation is provided.

Furthermore, the accounts must be published within 6 months after the conclusion of the collection in one or several of the most widespread newspapers in the area, where the collection has taken place. If the collected amount does not exceed 10.000 DKK it is sufficient to publish an announcement stating that the accounts are available to the public for a period of at least 14 days at a certain place, cf. section 6 (1) of the order.

Additionally, the order prescribes that a copy of the accounts and a notice stating when and where the publication of the accounts will take place must be sent to the police, cf. section 7.

A breach of the provisions in the act and the order is punishable.

The provisions concerning financing of terrorism in the Criminal Code and in the Money Laundering Act are of course also applicable.

Question 1.3

The CTC would appreciate receiving a progress report on the revision of the criminal law regimes of Greenland and the Faroe Islands so as to ensure these contribute to compliance with the Resolution in those territories.

As stated in Denmark's previous reports to the CTC, the amendments of the Criminal Code do not apply to the Faroe Islands, but the amendments may enter into force by a Royal decree. Before the coming into force of the amendments, the Faroe Home Rule must have the amendments presented for an opinion. The Ministry of Justice and representatives from the Faroe Home Rule are currently discussing how to ensure full and effective compliance with Resolution 1373 (2001).

Concerning Greenland, the Danish Government notes that the existing special Criminal Code contains provisions concerning acts committed with a terrorist purpose. The Commission on Greenland's Judicial System has been charged with the task to carry out a fundamental revision of the judicial system in Greenland and to draft a revised version of the special Criminal Code and the special Administration of Justice Act applying in Greenland. The Commission has now held its last meeting, and the report is expected to be submitted in 2003. When the revised special Criminal Code is available, the Ministry of Justice will examine it in order to ensure that all requirements in Resolution 1373 (2001) are fully met.

Question 1.4

Effective implementation of sub-paragraphs 2 (d) and (e) of the Resolution requires, among other things, the criminalisation of the use of a State's territory for the purpose of financing, planning and facilitating of terrorist acts aimed against other States or their citizens, even if no related terrorist acts have not (yet) been committed or attempted. Please explain whether the proposed provisions on terrorism will meet this requirement. If not, how does Denmark intend to meet this requirement?

The new provisions in the Criminal Code on terrorism and financing of terrorism are not limited to terrorist attacks against the Danish State and authorities. Attacks against foreign states, authorities and/or citizens are also criminalized.

Pursuant to section 6 (1) of the Criminal Code acts committed within the territory of the Danish State is subject to Danish criminal jurisdiction. It is not a requirement that every part of the criminal act is committed in Denmark. Therefore, both attempt to commit terrorist acts and preparation of terrorist acts taking place on Danish territory is punishable in Denmark, even though the act is carried out in or directed against a foreign state.

It should also be noted that the Danish Criminal Code contains very wide-ranging provisions on attempt and complicity.

Section 21 (1) on attempt reads as follows: "Acts which aim at the promotion or accomplishment of an offence shall be punished as an attempt when the offence is not completed."

Section 23 (complicity):

"(1) The penalty in respect of an offence shall apply to any person who has contributed to the execution of the wrongful act by instigation, advice or action. The punishment may be reduced for any person who has only intended to give assistance of minor importance, or to strengthen

an intent already resolved and if the offence has not been completed or an intended assistance has failed.

(2) The punishment may similarly be reduced for a person who has contributed to the breach of a duty in a special relationship in which he himself had no part.

(3) Unless otherwise provided, the penalty for participation in offences that are not punishable more severely than with imprisonment for any term not exceeding 4 months may be remitted where the accomplice only intended to give assistance of minor importance or to strengthen an intention already existing, or where his complicity is due to negligence."

In the opinion of the Danish Government the new provisions on terrorism along with the provisions on jurisdiction, attempt and complicity fully meet the requirements of the resolution concerning the criminalisation of terrorism.

Question 1.5

The supplementary report does not make clear whether Denmark recognizes claims of political motivation as grounds for refusing extradition of terrorists to States that are not a party to the European Convention for the Suppression of Terrorism, the Convention for the Suppression of Bombings or the Convention for the Suppression of the Financing of Terrorism. Could Denmark please explain how, in dealing with requests for extradition of terrorists by such States, it would fully meet the requirement of the sub-paragraph 3 (g).

Section 5 (1) of the Extradition Act prohibits extradition for a political offence. Subsection 3 deviates from this principal rule. Subsection 3 states that Subsection 1 (the refusal of extradition for political offences) does not apply, when the count – for which extradition is requested – is covered by the European Convention for the Suppression of Terrorism, the International Convention for the Suppression of the Financing of Terrorism or the International Convention for the Suppression of Terrorist Bombings. Subsection 3 of the

Extradition Act is based on the principle of reciprocity, which is recognized in international law. Thus, Subsection 3 of the Extradition Act can only be applied if the requesting State is party to the Convention, which covers the count. If the requesting State has not ratified the Convention in question, a request for extradition for a political offence must be refused in accordance with Section 5 (1).

The term "political offence" is subject to a strict objective interpretation. Thus, a claim of political motivation is not a ground for refusing requests for extradition. As stated previously, Denmark has not within the last five years refused a request for extradition based on the political offence exception.

The Danish Government is expected to table a Bill in February 2003 concerning further amendments to the Extradition Act with a view to implementing the EU Framework Decision on the European arrest warrant and the surrender procedures between Member States. If the Danish Parliament adopts the Bill a request for extradition to another EU Member State cannot be refused with reference to the prohibition against extradition for political offences.

2. Assistance and guidance

Question 2.1

The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the Resolution. It encourages Denmark to inform the CTC of any areas in which assistance or advice might be of benefit in taking forward the implementation of the Resolution in Denmark, or of any areas in which Denmark might be in a position to offer assistance or advice to other States on the implementation of the Resolution.

The Government of Denmark appreciates the efforts by the CTC in facilitating coordination of assistance. Denmark does not need assistance in implementing the Resolution. The Danish Government is right now in the process of reviewing how development assistance can combat

some of the underlying causes of extreme fundamentalism and terrorism, and hopefully this work will provide new instruments. Furthermore, Denmark will be able to provide some technical assistance to other States in drafting legislation and information sharing concerning practice, cf. below.

Although there is no mention in either of the reports of assistance that Denmark might be able to provide to other States, the CTC would be grateful for an indication of any assistance or advice that Denmark is in a position to provide.

Denmark is prepared to provide assistance to other States in the drafting of anti-terrorism legislation and in information sharing concerning practice in the areas outlined below. Denmark would appreciate if this information were made available at the CTC web site.

General contact point:

Ministry of Foreign Affairs, JT.F

2, Asiatisk Plads

DK-1448 Copenhagen K

Denmark

Tel: +45 33 92 00 00

Fax +45 32 54 05 33

Email: JT.F@um.dk

Drafting of counter-terrorism legislation:

The Ministry of Justice

10, Slotsholmsgade

DK-1216 Copenhagen K

Denmark

Tel: +45 33 92 33 40

Fax: +45 33 93 35 10

Email: jm@jm.dk

Contact point: Acting Head of Division Anne Kristine Axelsson

The Criminal Law Division

Financial law and practice:

The Public Prosecutor for Serious Economic Crime

5, Anker Heegaards Gade 5th floor

DK-1572 Copenhagen V

Denmark

Tel: +45 33 14 88 88

Fax: +45 33 43 01 19

E-mail: econ.crime@post.tele.dk

Contact point: Deputy Public Prosecutor Ulla Høg

Ministry for Economic and Business Affairs

National Agency for Enterprise and Housing

17, Langelinie Allé

DK-2100 Copenhagen C

Tel: +45 35 46 60 00

Fax: +45 35 46 60 01

Email: ebst@ebst.dk

Contact point: Executive officer Dorthe G. Robdrup

Email: dr@ebst.dk, tel: +45 35 46 62 81, fax: +45 35 46 62 03

Customs law and practice:

Ministry of Taxation

Central customs- and tax administration

Customs control office

123, Østbanegade

DK-2100 Copenhagen Ø

Tel. +45 3529 73 00

Fax: +45 35 43 47 20

Contact point: Mette Krog

Tel: +45 35 29 24 22

Fax: +45 35 29 29 17

Email: mvk@tu22.ccta.dk

Immigration law and practice:

The Ministry of Refugees, Immigration and Integration Affairs

Holbergsgade 6

DK-1057 Copenhagen K

Denmark

Tel.: +45 33 92 33 80

Fax: +45 33 11 12 39

E-mail: inm@inm.dk

Contact point: Head of Department Dorit Hørlyck

International Department

Extradition law and practice:

The Ministry of Justice

Slotsholmsgade 10

DK-1216 Copenhagen K

Denmark

Tel.: +45 33 92 33 40

Fax: +45 33 93 35 10

E-mail: jm@jm.dk

Contact point: Head of Division Jakob Scharf

International Division

Police and law enforcement work:

The Ministry of Justice

Slotsholmsgade 10

DK-1216 Copenhagen K

Denmark

Tel.: +45 33 92 33 40

Fax: +45 33 93 35 10

E-mail: jm@jm.dk

Contact point: Head of Division Lennart Lindblom

Division for the police

Illegal arms-trafficking:

The Ministry of Justice

Slotsholmsgade 10

DK-1216 Copenhagen K

Denmark

Tel.: +45 33 92 33 40

Fax: +45 33 93 35 10

E-mail: jm@jm.dk

Contact point: Acting Head of Division Ida Skouvig

The Road Traffic Division

United Nations S/2003/275

Security Council

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6 March 2003

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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/521).

The Counter-Terrorism Committee has received the attached third report from Estonia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27574 (E) 120303

Annex

Note verbale dated 18 February 2003 from the Permanent Mission of Estonia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Estonia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism and has the honour to submit the further supplementary report in accordance with the letter from the Chairman of the Counter-Terrorism Committee dated 15 November 2002 (see enclosure).

Enclosure

Further supplementary report for the Counter-Terrorism Committee regarding the measures taken by Estonia to implement resolution 1373 (2001)

In addition to the already presented (pursuant to paragraph 6 of resolution 1373 (2001)) Estonian report (24 July 2002), and pursuant to Counter-Terrorism Committee's note verbale dated 15 November 2002 Estonia is hereby providing a further supplementary report concerning the implementation of the resolution 1373 (2001).

1.2 The amendments to the Money Laundering Prevention Act (hereinafter: **MLPA**), which will presumably be submitted to the Parliament in the first half of 2003 and is expected to be adopted by the end of 2003, also defines the financing of terrorism, and regulates in greater detail the financing of terrorism as an offence. This definition is based upon the UN Convention for the Suppression of the Financing of Terrorism; resolution 1373 (2001); and the Common Position of the European Union Council, Regulation No. 2580/2001, of 27 December 2001, specifying the restrictive measures to be used against particular persons and entities, for the purpose of combating terrorism.

Draft amendments to the MLPA provide for an additional list of operations and transactions whereby the client must be identified in order to avoid the possibility of money laundering or the financing of terrorism. Draft amendments to the MLPA also oblige credit and financial institutions to notify the Financial Intelligence Unit (FIU) if, in the course of managing their clients' financial affairs, they find indications referring to the financing of terrorism. In the case of a reasoned suspicion of the financing of terrorism, the FIU is entitled to suspend the operation, or limit the use of the resources of the account for up to 2 working days after the client has inquired about the reasons for the suspension of the operation The prescribed restrictive measures may be revealed only after the FIU has given its permission to do so. Credit and financial institutions are forbidden from informing the person suspected of financing terrorism about the notice given to the FIU, unless the FIU has suspended the operation and given permission to inform the person.

Moreover, according to these amendments, the Penal Code will be supplemented, and the financing of terrorism will explicitly be made a criminal offence. The maximum punishment for a person involved is 8 years imprisonment, and for a legal entity – compulsory dissolution.

Estonian legislation allows the international co-operation in the case of suspected terrorism financing on the same basis as in the case of money laundering. Hereby, the referred legal provisions will help to harmonize Estonian legislation with relevant UN instruments.

1.3 In addition to the information provided in our earlier reports, the amendments to the MLPA will introduce some changes into the procedures for the freezing of funds linked to terrorism financing. According to the draft act, credit and financial institutions shall be obliged to inform the Financial Intelligence Unit (**FIU**) about any

suspicion of terrorism financing. The FIU shall be given the authority to study reports of suspected transactions linked to terrorism financing.

Amendments to the MLPA specify the rules regarding the funds associated (also presumably) with money laundering or terrorism, and state that if in the event of a reasonable suspicion of money laundering, the possessor or owner of the property does not provide the documentation proving the legal origin of the property within 2 days of the suspension of the transaction, the FIU is entitled to issue a warrant to seize the property in order to guarantee that the property will be retained until the matter of the legality of its origin has been settled. The FIU will apply to the administrative court for turning the arrested property into the ownership of the state in case no proof has been provided detailing the legal origin of the property, within one year of the seizing of the property.

Thus, seizing resources is not primarily linked to terrorist offences, but the possessor or owner of the property bears the burden of proof to justify the legal origin of the resources.

The International Sanctions' Act, which was adopted on 4 December 2002, provides measures for the domestic application of international sanctions: business and other relationships should be prohibited with persons and entities that are reluctant to obey the rules of international law and principles.

1.4 The International Sanctions Act (**ISA**) was adopted by the Parliament 4 December 2002 and came into force on 2 January 2003. The Act is now being translated into English in the Legal Translation Center, and we will provide you with it as soon as the official translation is completed. However, it is possible to enclose the nonofficial translation of Article 3 of the ISA, which describes the measures for the domestic implementation of international sanctions. The International Sanctions Act regulates the national implementation of international sanctions when the sanctions have been adopted by:

1) The UN Security Council
2) The Council of the European Union
3) Other international organizations
4) The Government of the Republic on its own initiative.

Paragraph 3 of the Law on International Sanctions stipulates that to the extent necessary for the domestic implementation of an international sanction, the Government of the Republic has the right to adopt the following measures:

1) To prohibit the entry into and stay in Estonia of the natural persons that belong to the sanctioned entity;
2) To prohibit or restrict any trade in goods and other business activities with the sanctioned entity; as well as with its legal and natural persons;
3) To prohibit the granting of loans and credit, as well as payments of monetary resources to the sanctioned entity, as well as to its legal and natural persons;
4) To prohibit to transfer, pledge, or use in any other way any monetary resources, including bills of exchange, cheques and other means of payment, securities, precious metals, precious stones, or other such valuables that belong to the sanctioned entity as well as to its legal and natural persons;

5) To prohibit the transfer, pledging, or giving into use of any monetary resources, including bills of exchange, cheques and other means of payment, securities, precious metals, precious stones, or other such valuables to the sanctioned entity as well as to its legal and natural persons;
6) To prohibit the conclusion of transactions with immovable or movable property which is entered in a register by the sanctioned entity as well as with its legal and natural persons;
7) To prohibit to give any information to, or to communicate with the sanctioned entity or to restrict the delivery of information or communication;
8) To prohibit or restrict the traffic, including land, water, and air transport, to or from sanctioned entity;
9) To prohibit or restrict any co-operation with the sanctioned entity in the field on science, education, vocation, culture, or defence.

With the adoption of the International Sanctions Act, several other Acts were amended: the credit and financial institutions are now obliged to introduce in their domestic regulations relevant provisions which would enable them to implement international sanctions, adopted pursuant to the International Sanctions Act.

1.5 Penal Code is divided into two parts - General part and special part. Special part prescribes the statutory definitions of offences. When the concrete legal norms of the Special Part are being applied, the norms of the General Part must always be taken into account. The General Part gives the general bases of penal responsibility. The Articles of the Penal Act, which condemn terrorism, are incorporated into the chapter titled Offences Against State Power. The Code does not differentiate between terrorist acts, which have been aimed against the homeland and its citizens, or against some other country.

Article 8 of the Penal Code states the applicability of the penal law to acts against internationally protected legal rights. This article states that: "*Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia.*"

This article includes the internationally accepted principle of universal jurisdiction. According to this principle, the penal law of a state is applicable to all persons irrespective of their place of residence, citizenship, and territory where the offence was committed, and irrespective of against whom it was committed. This principle is applicable only to universal crimes – crimes, which offend internationally protected legal rights. All states are interested in the persecution and prosecuting of such crimes. These crimes have been defined in international conventions.

Estonia has joined all the conventions, which are related to terrorism, and thus, the principle of universal jurisdiction stated in Article 8 is applicable to Article 237, and other offences.

Art. 237 of the Penal Code (Terrorism) cannot in any way be interpreted as the criminalization of only those terrorist acts, which are aimed at Estonian citizens or the Estonian state. The Article actually states that acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the

intention to provoke war or an international conflict or for political or religious causes, are punishable by 3 to 12 years' imprisonment or life imprisonment. The same act, if committed by a legal person, is punishable by compulsory dissolution. The wording of the referred to provisions reflects the fact that an offence committed against another democratic entity in Estonia, is regarded as an offence against international security. Offences against international security are dealt with in Penal Code Art. 110-112 in greater detail. These Articles specify some of the ways in which terrorist acts can be committed (piracy, the hijacking of aircraft, and attacks against flight safety).

Thus, the articles of terrorism in the Estonian Penal Code are not limited to the terrorist attacks against Estonia.

With regard to the statement, that, according to Estonian laws, the acts described in Article 246 are punishable only if committed on Estonian territory, we would like to draw your attention to Penal Code Art. 6 (Territorial applicability of Penal Code). This Article states clearly that the Estonian penal law applies to acts committed within the territory of Estonia, and to acts committed on board of, or against ships or aircraft registered in Estonia, regardless of the location of the ship or aircraft at the time of the commission of the offence, or regardless of the penal law of the country where the offence is committed.

1.6 In 2004, Estonia intends to become a party to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. The Government will present the ratification Act to the Parliament in April 2003.

1.7 Decisions in extradition cases are made according to international law. For example, the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Convention on Extradition must be met.

The European Convention on Extradition Article 3 Paragraph 1 forbids extradition for political offences or offences connected with political offences. It allows the requested Party to decide whether the offence is political or not. But terrorist offences are not regarded as political offences. To that end, Estonia actively participated in the negotiations dealing with the amending protocol to the European Convention on the Suppression of Terrorism (under the auspices of the Council of Europe), pursuant to which the offences prescribed in all of the anti-terrorism conventions shall not be considered as political offences for the purposes of extradition. So far, in practice, Estonia has never invoked the political offence clause in cases of extradition.

Additional note

Acts related to terrorist acts are punishable regardless of whether the related terrorist act has actually occurred or has been attempted. It derives from the formulation of the Article 237 (Terrorism) which states specifically: "*Acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the intention to provoke war or an international conflict or for political or religious causes, are punishable*." The formulation "acts aimed at" means that it is enough to bring to account a person for the related acts of a terrorist act irrespective of whether the terrorist act itself has actually occurred or has been attempted. It means that a person may be punished if they are only planning a terrorist act and are only making preparations to commit the act.

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Security Council

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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1281).

The Counter-Terrorism Committee has received the attached third report from Austria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-27859 (E) 190303

Annex

Note verbale dated 24 February 2003 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Austria to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith Austria's third report on the implementation of resolution 1373 (2001) (see enclosure).

Enclosure

Additional information by Austria to the Committee established under article 6 of resolution 1373 (2001) adopted by the Security Council at its 4385th meeting on 28 September 2001*

In his letter of 15 November 2002, the Chairman of the Counter-Terrorism Committee (CTC) established under article 6 of resolution 1373 (2001) asked Austria to submit some further information on the steps taken to implement the resolution. In addition to the supplementary report of the Government of Austria submitted in a letter dated 2 August 2002, Austria is pleased to provide the CTC with the following additional information.

1. Implementation measures

1.1. Bill to criminalize the financing of terrorism (concerning item 1.1. of the letter of the CTC dated 15 November 2002)

A recent amendment which has broadened the scope of the Penal Code and inter alia criminalizes the financing of terrorism and the collection of funds for terrorist purposes by terrorist groups and others entered into force on 1 October 2002 and can be found at

http://ris.bka.gv.at/taweb-cgi/taweb?x=d&o=l&v=bgbl&db=BGBL&q={$QUERY}&sl=100&t=doc4.tmpl&s=(134/2002):PORG%20und%20(1):TEIL

(see in particular Sections 278b, 278c and 278d of the Penal Code dealing specifically with terrorism including the financing of terrorism). An English working translation of the most important provisions both of the Austrian Penal Code and the Austrian Code of Criminal Procedure concerning the criminalisation of terrorism is annexed to this report.

1.2. Amendment relating to the EU Money-Laundering Directive (concerning item 1.3.)

The final necessary amendments in relation to the EU Money Laundering Directive will take effect in the coming months. The CTC will be informed as soon as the relevant acts have been enacted.

1.3. Freezing of funds, assets and economic resources of individuals and entities (concerning item 1.4.)

There are **three different legal instruments** available in Austria in order to achieve the objectives set out in sub-paragraph 1 (c) of resolution 1373 (2001).

* Enclosures are on file with the Secretariat and are available for consultation.

Firstly, **EU Council Regulation (EC) No 2580/2001 of 27 December 2001** on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28 December 2001, p. 70) which is directly applicable in Austria, freezes funds, financial assets and economic resources of, and prohibits the provision of financial services to, persons, groups and entities involved in terrorism. It foresees that the Council will establish and maintain a list of persons, groups and entities involved in terrorism. The latest version of the list is laid down in Council Decision 2002/974/EC (OJ L 337 of 13 December 2002, p.85).

Secondly, based on EU Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ L 344 of 28 December 2001, p. 93) the **Oesterreichische Nationalbank set up special restrictions on the movement of capital**, e.g. freezing of funds, in a legally binding official announcement. The latest amendment dated 15 January 2003 can be found at

http://www2.oenb.at/kundmach/kundm_dl3_2002_e.pdf.

Thirdly, the amended **Penal Code and the Code of Criminal Procedure** (see reference under 1.1.) implementing both Resolution 1373 (2001) and the International Convention for the Suppression of the Financing of Terrorism provide the possibility to issue an **injunction with respect to funds, assets and economic resources of individuals and entities, either resident or non-resident**, if they are linked to terrorism. The relevant provisions include funds, assets and economic resources suspected to have been obtained through or could be used for the commitment of a criminal act as defined in Section 278d of the Penal Code. In addition, this procedure applies also to funds, assets and economic resources within the disposition of a criminal organisation or a terrorist group.

As regards the **request of another country** to freeze funds linked to terrorism that are held in financial institutions in Austria, the Austrian law permits such a freezing irrespective of whether that country is a member of the EU or not. In case of Austrian jurisdiction, however, the relevant provisions of the Penal Code will primarily apply to funds linked to terrorism that are located in Austria. Thus, the above-mentioned injunction will be issued regardless of whether or not a request of another country to freeze such funds exists.

As regards requests of other countries in general, based on Section 144a of the Code of Criminal Procedure in connection with Sections 20 and 20b of the Penal Code an injunction can be issued by the competent Austrian court with respect to proceeds suspected to have been obtained through or for the commission of a criminal offence, including a terrorist offence, as well as assets within the disposition of a criminal or a terrorist organisation (Sections 278a and b of the Penal Code). On the basis of such an injunction, funds that are held in financial institutions in Austria can be frozen on the request of any other country.

In accordance with the relevant provision of the International Convention for the Suppression of the Financing of Terrorism, the explanatory memorandum regarding section 278(d) of the Penal Code explains that "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired. According to the above mentioned provision "funds" encompass also legal documents or instruments in any form, including electronic or digital, evidencing title to such assets, such as bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit.

1.4. Mechanism to oversee and monitor the collection and the use of the funds by non-profit organisations to ensure that they are not diverted for purposes of terrorism (concerning item 1.5.)

As a general assessment it has to be stated that the Penal Code criminalizes the use or collection of funds to facilitate a terrorist act. Any non-profit organisation that would attempt to divert funds for purposes of terrorism, either within or outside Austria, would fall under these provisions. The same would also apply to the collection of funds with the view to use them for a terrorist act at a later stage. In view of the provisions of the Penal Code, since 11 September 2001 the Austrian Ministry of Interior initiated several investigations based on information about suspicious possible links between non-profit organisations and terrorism.

Many charitable institutions and similar entities conduct their activities as an association at law. The relevant law requires such institutions or entities to register and to meet certain qualification requirements to ensure transparency and accountability. In accordance with the relevant FATF recommendations and in cases where larger amounts of money from public sources are involved, the law in particular contains safeguards in order not to create loopholes for terrorist financiers. For instance if the revenues or expenses of associations exceed a certain threshold (higher than €1 million during two consecutive years) a detailed annual financial statement is obligatory. Furthermore, if the collected funds exceed a certain limit (more than €1 million in two consecutive years respectively) an annual audit has to be performed by a Certified Public and a Chartered Accountant.

In addition, the non-profit sector in Austria established a representational and self-regulatory mechanism to protect the sector against abuse (inter alia an Austrian "Quality Seal" for non profit organisations (Spendegütesiegel) exists since November 2001 which at the moment covers 87 NPO). Such measures will in the future be encouraged as an important method of decreasing also the risk of possible misuse of NPO by terrorist groups.

As regards the question of tax deductibility, according to the Austrian Law on Income Taxes, donations (e.g. to charitable organisations) are not tax-deductible. A tax benefit is however foreseen for donations to scientific institutions. The favoured categories of donation recipients are listed in the law (universities, research promotion funds, certain museums, etc.). The federal tax administration authorities are authorised within the legal framework to recognise such non-profit-making associations and institutions in the field of research and

science as favoured donation recipients on an individual basis. A list of these favoured recipients is published by the Ministry of Finance annually and can be found at

http://www.bmf.gv.at/steuern/Einkommensteuer/Erlaesse/Spenden/_start.htm

1.5. Further information on the amendments of the Banking Act and the Gaming Act (concerning item 1.6.)

Due to the current negotiations for the formation of a new Government after the general elections in November 2002, the important issue concerning the proposed amendments of the Banking Act and the Gaming Act including provisions for credit and financial institutions for the extended control and reporting requirements on possible terrorist financing have yet not been forwarded to the Austrian Parliament. However, the CTC will be informed as soon as both acts have been enacted.

1.6. Criminalisation of the use of Austrian territory for the purpose of committing terrorist acts against another State or its citizens or for the purpose of financing, planning and facilitating of such terrorist acts (concerning item 1.7.)

The new provisions of the Austrian Penal Code concerning terrorism cover the above-mentioned acts even though no related terrorist acts have actually been committed or attempted. Thus, neither leading or participating in a terrorist group according to section 278b of the Penal Code nor the financing of terrorism according to section 278d of the Penal Code require that a terrorist act has already been committed or attempted. It would for instance be sufficient if funds are collected or if members are recruited only with a view to commit terrorist acts later on. Furthermore, it is not relevant whether or not the terrorist acts take place on Austrian territory or are targeted against Austria.

1.7. Outline of the provisions of laws that prevent the recruitment to terrorist groups either inside or outside Austria (concerning item 1.8.)

Section 278b of the Austrian Penal Code criminalizes the leading of and the participation in a terrorist group. For the purpose of further defining the meaning of "participation" Section 278b para. 3 refers to Section 278 para. 3 of the Penal Code which stipulates that anybody who inter alia supports a (criminal) group by providing information or assets or in any other way with the awareness that he/she thereby promotes the group or its criminal acts participates as member in the group. As has been pointed out explicitly in the explanatory memorandum to the government bill that introduced this concept, "recruiting" is an example for such a support "in another way".

1. 8. Foreign nationals who are in Austria and are alleged to have committed a terrorist act outside Austria (concerning item 1.9.)

Austrian Penal law requires to prosecute foreign nationals who committed a terrorist offence outside Austria and who are found in Austria and can not be extradited.

Under Section 64 para.1 subpara. 9 of the Penal Code, there is Austrian jurisdiction regarding the following offences committed abroad:

- conspiracy to commit terrorist offences (Section 278b of the Penal Code); and
- terrorist offences (Section 278c of the Penal Code),

provided inter alia that the perpetrator was a foreign national at the time of the commission of the offence and his/her surrender or extradition is refused.

Under Section 64 para. 1 subpara. 10 of the Penal Code, there is Austrian jurisdiction with regard to the offence of financing of terrorism (Section 278d of the Penal Code) committed abroad, provided inter alia that the perpetrator is found in Austria and cannot be extradited to another State. Furthermore, Section 65 para.1 subpara. 2 of the Penal Code provides for Austrian jurisdiction over foreign nationals who have committed criminal offences, including terrorist offences, abroad and are found in Austria and cannot be extradited to another State.

2. Assistance and guidance

Austria concentrates its efforts particularly on technical assistance using multilateral channels. For instance, in 2002 Austria pledged and disbursed the amount of USD 1,000.000,-- for the United Nations Office on Drugs and Crime Programme against Terrorism, implemented by the ODC Terrorism Prevention Branch (TPB). Focusing on operational activities to promote the implementation of counter-terrorism instruments, the TPB identifies countries in need of assistance, provides legal advisory services and develops tools for technical assistance. In order to help countries to implement both the provisions of resolution 1373 (2001) and the pertinent United Nations legal instruments to fight terrorism, legislative guides and implementation kits are being prepared and relevant legislation and model laws are collected, analysed and disseminated.

Austria too sees particular value in addressing counter-terrorism and assistance in combating transnational organised crime and illicit drug trafficking in a combined manner. Since in most countries law-making and implementation measures in both areas are required to be done, often by the same authorities and experts, combined advice is not only useful and efficient, but it also enhances the quality of the results.

In 2003 probably more than 20 counties will benefit from expert advice under this programme. Thus, Austria strongly believes that ODC activities in counter-terrorism assistance might also attract other donors seeking effective ways in making their contribution.

Other activities include the organisation of an "Air Marshal" seminar in October 2002. EU member States, EU candidate countries as well as other interested countries took part in this seminar that focused on air safety. Exchange of information on the deployment of Air Marshals, threat analysis and security on board of airplanes including their legal bases and possible future perspectives for the deployment of Air Marshals were the main issues discussed.

On the bilateral field, beside expert meetings with many different countries, in 2002 two workshops on combating terrorism were organised with Bulgaria and Romania, respectively. Because of their success similar workshops with other countries will follow.